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REPORT

INTRODUCTORY LETTER.

To The Right Honourable Viscount Peel, P C , G B E ,

Secretary of State for India

My Lord,

Appointment of our Committee and terms of reference

We were appointed by Your Lordship's predecessor the Right Honourable the Earl of Birkenhead, P C , G C S I , on the 16th December 1927 our terms of reference being—

(1) to report upon the relationship between the Paramount Power and the Indian States with particular reference to the rights and obligations arising from —

(a) treaties engagements and sanads, and

(b) usage, sufferance and other causes, and

(2) to inquire into the financial and economic relations between British India and the states, and to make any recommendations that the committee may consider desirable or necessary for their more satisfactory adjustment

Part (1) refers only to the existing relationship between the Paramount Power and the states Part (2) refers not only to the existing financial and economic relations between British India and the states but also invites us to make recommendations for the future

Origin of enquiry.

2 The request for an enquiry originated at a conference convened by His Excellency the Viceroy at Simla in May, 1927, when a representative group of Princes asked for the appointment of a special committee to examine the relationship existing between themselves and the Paramount Power and to suggest means for securing effective consultation and co-operation between British India and the Indian States and for the settlement of differences The Princes also asked for adequate investigation of certain disabilities under which they felt that they laboured

Preliminary arrangements

3 When our committee assembled at Delhi on the 14th January, 1928, we found that the Princes had no case ready The Standing Committee of the Chamber of Princes had no permanent office or secretariat, many of the states had no properly arranged archives, and without prolonged search, the Princes said, they could not formulate their claims Eventually it was agreed between our committee and the Standing Committee of the Chamber of Princes that we should visit the States during the winter months and then adjourn to England where their case would be presented before us Eminent counsel, the Right Honourable Sir Leslie Scott, K C, M P, was retained by the Standing Committee of the Chamber and a number of Princes to represent them before us A questionnaire was issued on the 1st March, 1928, to all members of the Chamber of Princes and to the Ruling Chiefs entitled to representation therein and to the Local Governments in India The questionnaire, which defines and explains the scope of our enquiry, forms Appendix I to our report

Tours and assistance given

4 We visited fifteen states Rampur, Patiala, Bikaner Udaipur Alwar, Jaipur, Jodhpur Palanpur Jamnagar, Baroda Hyderabad, Mysore, Bhopal Gwalior and Kashmir At each of these states we discussed locally and informally such questions as were brought before us We also paid a flying visit to Dholpur Altogether we travelled some 8 000 miles in India and examined informally 48 witnesses We returned to England early in May, 1928 Their Highnesses the Rulers of Kashmir, Bhopal, Patiala, Cutch and Nawanagar, members of the Standing Committee of the Chamber of Princes, also arrived in England during the course of the summer and were present when Sir Leslie Scott in October and November formally put forward the case on behalf of the states which he represented We desire to express our deep obligations to the Princes whose states we visited for their great, a traditional hospitality to express our regret to those whose invitations to visit their states we were unable to accept and to acknowledge the unfailing courtesy and assistance which we have everywhere received from the Standing Committee, from the Princes individually from the ministers and governments of the several states and from their counsel Sir Leslie Scott assisted by others and especially by Colonel Haksar C I E We desire also to acknowledge the ready assistance that has been given us throughout by His Excellency Lord Irwin and the Political and other Departments of the Government of India

Representations on behalf of subjects of states, and feudatory chiefs and jagirdars

5 In the course of our enquiry we were approached by persons and associations purporting to represent the subjects of Indian States It was quite clear that our terms of reference did not cover an investigation of their alleged grievances and we declined to hear them but we allowed them to put in written statements, and in the course of our tours we endeavoured to ascertain the general character of the administration in the states We also received representations from many of the Feudatory Chiefs of Bihar and Orissa requesting a reconsideration of their status and powers, as well as representations from the feudatories of the Kolhapur State These also we have not dealt with, as they fall outside the scope of our enquiry

Divergent views of Princes

6 It was soon obvious to us that very divergent views on important matters were held by the Princes themselves The important states Hyderabad Mysore, Baroda, Travancore as well as Cochin Rampur Junagadh and other states in Kathiawar and elsewhere declined to be represented by Sir Leslie Scott and preferred to state their own case in written replies to the questionnaire We can however claim that we have done our best to ascertain so far as this is possible the views of the Princes as a body

Voluminous documents.

7 Altogether seventy replies to the questionnaire have been received from different states Many of these, although instructive as to the feelings of the Princes and Chiefs, refer to matters outside our enquiry such as requests for the revision of state boundaries, claims in regard to territories settled or transferred many years back, applications to revise decisions by the Paramount Power made at almost any time during the last century, requests in the matter of precedence, salutes titles, honours, and personal dignities These requests and applications will be forwarded to the Political Department of the Government of India

Acknowledgments to secretary and staff.

8 In conclusion we desire to bring to Your Lordship s notice the admirable work done by our secretary, Lieutenant Colonel G D Ogilvie, C I E His exceptional knowledge of the history of recent discussions his great popularity with the Princes his industry zeal and ability, have very greatly impressed us and placed us under a heavy obligation

We desire also to record our appreciation of the very satisfactory manner in which the office staff of the committee performed their duties

Sections of the report

9 We have drawn up our report in four sections —

I —Relationship between the Paramount Power and the States Historical summary

II —Relationship between the Paramount Power and the States More detailed examination

III —Financial and economic relations between British India and the States Machinery

IV —*Financial and economic relations between British India* and the States Specific proposals

And we have the honour to be,

Your Lordship s Most obedient Servants

HARCOURT BUTLER

SIDNEY PEEL

W S HOLDSWORTH.

The 14th February 1929

REPORT

I.—RELATIONSHIP BETWEEN THE PARAMOUNT POWER AND THE STATES HISTORICAL SURVEY.

Two Indias

10 Interwoven in the pink map of India are large patches of yellow which represent the Indian States * These states survived the establishment by the British of their dominion on the ruins of the Moghul empire and the Mahratta supremacy They cover an area of 598,138 square miles with a population of 68,652,974 people, or about two fifths of the area and one fifth of the population respectively of India including the states but excluding Burma † Politically there are thus two Indias British India, governed by the Crown according to the statutes of Parliament and enactments of the Indian legislature and the Indian States under the suzerainty of the Crown and still for the most part under the personal rule of their Princes Geographically India is one and indivisible made up of the pink and the yellow The problem of statesmanship is to hold the two together

Indian States

11 The Indian States as they exist to day fall into three distinct classes

Class of State Estate etc	Number	*Area in square miles*	Population	*Revenue in crores of rupees* ‡
I States the rulers of which are members of the Chamber of Princes in their own right	108	514 886	59 847 186	42 16
II States the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves	127	76 846	8 004 114	2 89
III Estates, Jagirs and others	327	6 406	801 674	74

The term Indian State is, in fact, extremely elastic as regards both size and government It covers at one end of the scale, Hyderabad with an area of 82,700 square miles, with a

* See map attached to this report

† The area of India including the states but excluding Burma is 1 571 675 square miles The population of India including the states but excluding Burma according to the census of 1921 is 305 730 288

‡ A crore (ten millions) of *rupees* at an exchange of one shilling and six pence for the rupee is equivalent to £750 000

on of 12 ,00 000 and a revenue of 6½ crores of rupees or £, 000 000 and at the other end of the scale minute in Kathiawar amounting in extent to a few acres only n in certain cases holdings which yield a revenue not than that of the annual income of an ordinary artisan It also states economically politically and administratively d and states, patriarchal, or quasi feudal in character which ver in a medieval atmosphere states with varying political constitutional states like Mysore and Travancore and thich are under purely autocratic administration The one common to them all is that they are not part or governed aw of British India

Geographical and historical features

In the Indian States nature assumes its grandest and its forms The eternal snows of the Himalaya gather up and e the mystery of the East and its ancient lore The enter old world western adventure now slumbers by the placid of Travancore and Cochin The parched plains of ana and Central India with their hilly fastnesses recall the and chivalry of days that still live and inspire great s and deeds The hills and plains of Hyderabad and , famed for gems and gold for rivers forest water falls out great names of history Over the dry trap plateaux of ccan swept the marauding hosts of the Mahrattas eating nd drinking there right up to ancient Delhi From the he ports of Kathiawar with their busy progressive people out hands to the jungles of Manipur in the East with imitive folk and strange practices The marching life of and Mahratta times has yielded to the sustained quiet sh rule but the old spirit survives in many a story and hope

Importance of states

The Indian States still form the most picturesque part of they also represent where the Prince and his people are , the ancient form of government in India In the Brah polity the Kshatriya (Rajput) Raja is as necessary an as the Brahmin priest and all that is national in Hindu 's turned towards him Not always does the tie of religion e ruler and his subjects In the great state on the north ir) the ruler is Hindu whilst most of his subjects are , and in the great state on the south (Hyderabad) the ruler ssulman whilst most of his subjects are Hindus Truly it said that the Indian States are the Indian India

I.—RELATIONSHIP BETWEEN THE PARAMOUNT POWER AND THE STATES. HISTORICAL SURVEY.

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† [illegible]
squa[illegible]
accor[illegible] [illegible] 68

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States, and so far as we could gather, the consensus of opinion *amongst the Princes is that any attempt to do so would cause so* much heart-burning and open up so many difficulties that it had better not be made. The great variety of the Indian States and the differences among them render uniform treatment of them difficult in practice if not impossible.

Our proposals concerned mainly with classes I and II.

17. We may say at once that in the main, our remarks and proposals have in view the first two classes only of Indian States, the rulers of which have, in greater or less degree, political power, legislative executive and judicial, over their subjects. While we do not wish to make recommendations in regard to the third class, it is obvious that they are placed differently from the larger states and call for treatment in groups rather than individually. The *petty states of Kathiawar and Gujerat, numbering 286 of the total of 327 in the third class, are organised in groups called thanas* under officers appointed by the local representatives of the Paramount Power who exercise various kinds and degrees of criminal, revenue and civil jurisdiction. As the cost of administration rises the states may find it necessary to distribute it over larger areas by appointing officials to work for several states. Already there is talk in some of the larger states in Kathiawar of appointing a High Court with powers over a group of such states.

Paramount Power

18. The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor General in Council who are responsible to the Parliament of Great Britain. Until 1835 the East India Company acted as trustees of and agents for the Crown, but the Crown was, through the Company, the Paramount Power. The Act of 1858, which put an end to the administration of the Company, did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers.

Fact and development of paramountcy.

19. The fact of the paramountcy of the Crown has been acted on and acquiesced in over a long period of time. It is based upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice. The general course of its evolution has been well described by a great modern jurist. "The same people," wrote Professor Westlake, "has determined by its action the constitutions of the United Kingdom and of India, and as a consequence these are similar so far as that

neither is an engine turned structure, but the architecture of each includes history, theory and modern fact and the books which describe them are similarly varied in their composition On the side of substance the principal difference between them is that, while in both the field covered by express definition leaves room for questions to arise in the Indian constitution an acknowledged supreme will decides every question which arises, but in that of the United Kingdom a balance of power causes questions to be less easy of solution *

Changes in policy

20 The paramountcy of the Crown acting through its agents dates from the beginning of the nineteenth century when the British became the *de facto* sole and unquestionable Paramount Power in India The policy of the British Government towards the states passed as stated in the report of Mr Montagu and Lord Chelmsford from the original plan of non intervention in all matters beyond its own ring fence to the policy of subordinate isolation initiated by Lord Hastings that in its turn gave way before the existing conception of the relation between the states and the Government of India which may be described as one of union and co operation on their part with the Paramount Power.

Position of treaties and intervention Hyderabad case cited

21 The validity of the treaties and engagements made with the Princes and the maintenance of their rights privileges and dignities have been both asserted and observed by the Paramount Power But the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political social and economic conditions The process commenced almost as soon as the treaties were made The case of Hyderabad may be cited by way of illustration Hyderabad is the most important state in India In 1800 the British made a treaty with His Highness the Nizam article 15 of which contains the following clause —

> The Honourable Company s Government on their part hereby declare that they have no manner of concern with any of His Highness children relations subjects or servants with respect to whom His Highness is absolute "

Yet so soon as 1804 the Indian Government successfully pressed the appointment of an individual as Chief Minister In 1815 the same Government had to interfere because the Nizam s sons offered violent resistance to his orders The administration of the state gradually sank into chaos Cultivation fell off famine prices prevailed justice was not obtainable, the population began to

* "The Native States of India" Law Quarterly Review, Vol XXVI 318

migrate The Indian Government was compelled again to intervene and in 1820 British officers were appointed to supervise the district administration with a view to protecting the cultivating classes Later on again the Court of Directors instructed the Indian Government to intimate to the Nizam through the residency that they could not remain "indifferent spectators of *the disorder and misrule and that unless there were improvement* it would be the duty of the Indian Government to urge on His Highness the necessity of changing his minister and taking *other measures necessary to secure good government* These are only some of the occasions of intervention They are sufficient to show that from the earliest times there was intervention by the Paramount Power in its own interests as responsible for the whole of India in the interests of the states, and in the interests of the people of the states

Reaction to doctrine of *laissez-faire*. Statement of Lord Canning

22 From this policy of intervention there was in time a reaction For some years before India passed under the direct government of the Crown, the doctrine of *laissez faire* prevailed *The states were left alone and in the event of revolt, misrule*. failure of heirs, etc , the Paramount Power stepped in with annexation This policy was abandoned again after the Crown assumed the direct government of India That great historical event, with its numerous implications, was thus described by Lord Canning, the first Viceroy of India —

"The Crown of England", he said, "stands forth the unquestioned ruler and Paramount Power in all India, and is for the first time brought face to face with its feudatories There is a reality in the suzerainty of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs '

Later in his despatch, dated the 30th April, 1860, Lord Canning laid down the two great principles which the British Government has followed ever since in dealing with the states (1) that the integrity of the states should be preserved by perpetuating the rule of the Princes whose power to adopt heirs was recognised by sanads granted in 1862 (2) that flagrant misgovernment must be prevented or arrested by timely exercise of intervention

Political practice and intervention.

23 With this acceptance of the necessity of intervention modern political practice may be said to have begun It received an extension from the development of a strong Political Department Intervention reached its zenith during the viceroyalty of Lord

Curzon The administration of many states broke down temporarily under the strain of the great famine of 1899, and drastic intervention became necessary in order to save life within the states and prevent the people of the states from wandering over British India In many states the Paramount Power was on grounds of humanity compelled to take over the direction of famine relief operations

Pronouncements of Paramount Power on paramountcy

24 The Paramount Power has defined its authority and right to intervene with no uncertain voice on several occasions, in the Baroda case (1873 75) the Manipur case (1891 92) and so lately as March 1926 in the letter of His Excellency Lord Reading to His Exalted Highness the Nizam of Hyderabad which carried the authority of His Majesty s Government This letter is so important that we quote it *in extenso* as Appendix II to this report

Baroda case, 1873-75

25 In the Baroda case a commission was appointed to investigate complaints brought against the Gaekwar s administration, and to suggest reforms In reply to his protest against the appointment of the commission as not being warranted by the relations subsisting between the British Government and the Baroda State the Gaekwar was informed as follows by the Viceroy and Governor General —

This intervention although amply justified by the language of treaties rests also on other foundations Your Highness has justly observ[illegible] is undoubtedly the Paramount [illegible]ce and prosperity of the Native [illegible]g favour and benign protection [illegible] Baroda State, both because of its [illegible] with British territory, and also because a subsidiary force of [illegible]h troops is maintained for the defence of the state the protection of the person of its ruler, and the enforcement of his legitimate authority

My friend I cannot consent to employ British troops to protect *any one in* a course of wrong doing Misrule on the part of a government which is upheld by the British power is misrule in the responsibility for which the British Government becomes in a measure involved It becomes therefore not only the right but the positive duty of the British Government to see that the administration of a state in such a condition is reformed, and that gross abuses are removed

It has never been the wish of the British Government to interfere in the details of the Baroda administration nor is it my desire to do so now The immediate responsibility for the Government of

the state rests and must continue to rest upon the Gaekwar for the time being He has been acknowledged as the sovereign of Baroda and he is responsible for exercising his sovereign powers with proper regard to his duties and obligations alike to the British Government and to his subjects If these obligations be not fulfilled if gross misgovernment be permitted if substantial justice be not done to the subjects of the Baroda State if life and property be not protected or if the general welfare of the country and people be persistently neglected the British Government will assuredly intervene in the manner which in its judgment may be best calculated to remove these evils and to secure good government Such timely intervention indeed to prevent misgovernment culminating in the ruin of the state is no less an act of friendship to the Gaekwar himself than a duty to his subjects

Manipur case, 1891-92

26 In 1891 violent disputes occurred in the Manipur State which led to the abdication of the Maharaja Mr Quinton Chief Commissioner of Assam was instructed to proceed to Manipur in order to bring about a settlement of the disputes On arrival, he and four British officers who were with him were treacherously made prisoners and forthwith beheaded under the orders of the Senapati or General (the brother of the Maharaja) and of the Prime Minister of the State An expedition was at once sent into Manipur to avenge this outrage Those responsible were arrested tried and executed In the course of the trial the counsel for the accused urged that the state of Manipur was independent and that its rulers were not liable to be tried for waging war against the Queen Empress and it was contended that they were justified in repelling an attack made upon the Senapati s house without even a declaration of war by the British Government In a Resolution of the 21st August 1891 reviewing the case which was issued by the Governor General in Council the position of the British Government in relation to the Indian States was explained as follows —

The Governor General in Council cannot admit this argument (*i e* the argument used by counsel for the defence) The degree of subordination in which the Manipur State stood towards the Indian Empire has been more than once explained in connection with these cases, and it must be taken to be proved conclusively that Manipur was a subordinate and protected state which owed submission to the Paramount Power and that its forcible resistance to a lawful order whether it be called waging war treason, rebellion or by any other name is an offence the commission of which justifies the exaction of adequate penalties from individuals concerned in such resistance as well as from the state as a whole The principles of international law have no bearing upon the relations between the

Government of India as representing the Queen-Empress on the one hand, and the Native States under the suzerainty of Her Majesty on the other The paramount supremacy of the former presupposes and implies the subordination of the latter In the exercise of their high prerogative, the Government of India have, in Manipur as in other protected states, the unquestioned right to remove by administrative order any person whose presence in the state may seem objectionable They also had the right to summon a darbar through their political representative for the purpose of declaring their decision upon matters connected with the expulsion of the ex-Maharaja, and if their order for the deportation of the Senapati were not obeyed, it was this officer's duty to take proper steps for his forcible apprehension In the opinion of the Governor General in Council any armed and violent resistance to such arrest was an act of rebellion, and can no more be justified by a plea of self-defence than could resistance to a police officer armed with a magistrate's warrant in British India The Governor-General in Council holds, therefore, that the accused persons were liable to be tried for waging war against the Queen "

Hyderabad case, 1926.

27 From the letter of His Excellency Lord Reading to His Exalted Highness the Nizam (Appendix II) the following general propositions may be extracted —

* * * * * * *

" The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India

* * * * * * *

"The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie The varying

degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility

* * * * * * *

It is the right and privilege of the Paramount Power to decide all disputes that may arise between States or between one of the States and itself and even though a Court of Arbitration may be appointed in certain cases its function is merely to offer independent advice to the Government of India with whom the decision rests

Lord Minto's definition of paramountcy

28 The Paramount Power has in practice defined the operation of its paramountcy at different times particularly when reforms of the administration of British India have been in the air during the viceroyalties that is of Lord Minto and Lord Chelmsford Lord Minto who had previously consulted the leading Princes as to the spread of sedition in several of the states made an important pronouncement of Policy at Udaipur on the 3rd November 1909

Udaipur speech

29 He dwelt upon the identity of interests between the Imperial Government and the Princes upon the mutual recognition of which the future history of India would be largely moulded Our policy he said is with rare exceptions one of non interference in the internal affairs of Native States But in guaranteeing their internal independence and in undertaking their protection against external aggression it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule There are also certain matters in which it is necessary for the Government of India to safeguard the interests of the community as a whole as well as those of the Paramount Power such as railways telegraphs and other services of an imperial character But the relationship of the Supreme Government to the states is one of suzerainty And Lord Minto went on to point out the diversity of conditions between the states which rendered dangerous all attempts at uniformity and subservience to precedent and necessitated the decision of questions with due regard to existing treaties the merits of each case local conditions antecedent circumstances and the particular stage of development feudal or constitutional of individual principalities It was part of policy to avoid the issue of general rules as far as possible and the forcing of British methods of administration on the states especially during minorities and political officers had a dual capacity as the mouth pieces of Government and also as the interpreters of the sentiments and aspirations of the states

Lord Hardinge and Princes

30 Some years later at Jodhpur Lord Hardinge referred to the Princes as "helpers and colleagues in the great task of imperial rule" Lord Hardinge also initiated conferences with the Ruling Princes on matters of imperial interest and on matters affecting the states as a whole

Montagu-Chelmsford report.

31 During the viceroyalty of Lord Chelmsford the spirit of reform in British India was again active and reflected on the relationship between the Paramount Power and the states In their report on Indian Constitutional Reforms Mr Montagu and Lord Chelmsford thus described the position of the states

"The states are guaranteed security from without, the Paramount Power acts for them in relation to foreign powers and other states, and it intervenes when the internal peace of their territories is seriously threatened On the other hand the states' relations to foreign powers are those of the Paramount Power, they share the obligation for common defence, and they are under a general responsibility for the good government and welfare of their territories"

Recommendations in Montagu Chelmsford report.

32 The authors of the report recommended the establishment of a Chamber of Princes with a Standing Committee They recommended also that political practice should be codified and standardised, that Commissions of Enquiry and Courts of Arbitration should be instituted, that a line of demarcation should be drawn between rulers enjoying full powers and those who do not, that all important states should be placed in direct political relations with the Government of India, and that machinery should be set up for joint deliberation on matters of common interest to British India and the Indian States

Chamber of Princes. Its importance

33 The Chamber of Princes was set up by the Crown by Royal Proclamation on the 8th February, 1921, and the Chamber was inaugurated by His Royal Highness the Duke of Connaught with a memorable speech The Chamber and its Standing Committee may not as yet have fulfilled all the expectations formed of them; their decisions do not bind the Princes as a body, or individually; and their proceedings are not held in public, some of the more important Princes have hitherto refused to attend meetings of the Chamber, His Exalted Highness the Nizam has always adopted an attitude of entire detachment from it, there have been criticisms of the rules of procedure, recently met by the action of Lord Irwin But nevertheless the constitution of the Chamber and its Standing Committee was a great and far reaching event It meant that the

Paramount Power had once and for all abandoned the old policy of isolating the states and that it welcomed their co operation

Codification of political practice and attitude of Paramount Power.

34 In 1919 during Lord Chelmsford s viceroyalty the codification of political practice was taken up in consultation with the states Twenty three points were formulated as representing cases in which the states complained that the Government of India had unwarrantably interfered in their internal administration A discussion on these points and some others subsequently added was begun between representatives of the Government of India and the Standing Committee of the Chamber In nine cases agreement was reached and Resolutions were issued by the Government of India laying down the procedure to be adopted for the future in others discussion is still proceeding Though the progress made has for various reasons not been so rapid as it might have been a great principle has been established The states have been taken into open conference The policy of secrecy has been abandoned For the old process of decision without discussion has been substituted the new process of decision after open conference and consultation

Sir Robert Holland's statement in 1919

35 At the first meeting of the committee appointed by the Conference of Ruling Prince and Chiefs and the representatives of the Government of India in September 1919 Mr (now Sir Robert) Holland who was then officiating Political Secretary to the Government of India summed up the position of the Government of India He said that there had been in the past a constant development of constitutional doctrine under the strain of new conditions as the British Power had welded the country into a composite whole That doctrine as for instance in the case of extra territorial jurisdiction railway and telegraph construction administration of cantonments and various other matters had been superimposed upon the original relations of many states with the Crown but had evolved in harmony with the needs of the Indian body politic and had not been inspired by any desire to limit the sovereign powers of the Indian rulers The rulers consent to such new doctrine had not always been sought in the past partly because it was often evolved piecemeal from precedents affecting individual states and partly because it would have been impracticable to secure combined assent within a reasonable period It was admitted however that while the justice and necessity of the new measures was clearly seen their effect upon the treaty position was not appreciated at the time with the result that a body of usage influencing the relations with the states had come into force through a process which though benevolent in intention was nevertheless to some extent arbitrary

Harmony between Paramount Power and States

36 In illustration of the proposition that the states have been adversely affected by the arbitrary action of the Paramount Power a considerable number of cases extending over more than a century have been laid before us by Sir Leslie Scott on behalf of the states which he represents and in the replies of other states to our questionnaire We are not asked nor have we authority to pass judgment in such cases still less to grant a remedy We have not heard we have not thought it necessary to hear the Paramount Power in regard to such cases We are in no sense a judicial tribunal nor can we exercise judicial functions * That the Paramount Power has acted on the whole with consideration and forbearance towards the states that many states owe their continued existence to its solicitude is undoubted and admitted Few Governments at any time in history could look back on more than a century of action without some historical regret that certain things had been done and that certain things had not been done Many of the grievances put forward by the states relate to times in which the administration of the states was very backward in comparison with what it is to-day Some of the grievances have already been met by concessions on the part of the Paramount Power One of the greatest of these, that the rights of the Princes have been given away during minority administrations has been met by a Resolution of the Government of India in 1917 Without pressure on the states over railways India would not have the communications that it has to-day without pressure the states would not have shown the progress that they do to-day Taking a broad view of the relationship between the Paramount Power and the states we hold that thanks to good feeling and compromise on both sides it has in the main been one of remarkable harmony for the common weal

Intervention by Paramount Power

37 In the last ten years the Paramount Power has interfered actively in the administration of individual states in only eighteen cases In nine of these interference was due to maladministration in four to gross extravagance or grave financial embarrassment The remaining five cases were due to miscellaneous causes In only three cases has the ruler been deprived of his powers No bad record this considering the number of states and the length of time concerned! We have heard comments from some of the Princes themselves that in certain of these cases intervention should have taken place sooner than was actually the case This is a difficult matter for which rules of procedure cannot well provide The decision when to intervene must be left and experience has shown that it can be safely left to the discretion of the Viceroy of the day

* This was explained from the beginning vide paragraph 3 of the questionnaire (Appendix I)

II.—RELATIONSHIP BETWEEN THE PARAMOUNT POWER AND THE STATES. MORE DETAILED EXAMINATION.

Legal opinion of eminent counsel.

38 We will now consider the relationship between the Paramount Power and the states in greater detail In this we have the advantage of the opinion of eminent counsel on the legal and constitutional aspects of the questions raised by the terms of reference to us (Appendix III), an opinion placed before us by Sir Leslie Scott With much of that opinion we find ourselves in agreement We agree that the relationship of the states to the Paramount Power is a relationship to the Crown, that the treaties made with them are treaties made with the Crown, and that those treaties are of continuing and binding force as between the states which made them and the Crown We agree that it is not correct to say that the treaties with the Native States must be read as a whole a doctrine to which there are obvious objections in theory and in fact There are only forty states with treaties, but the term in this context covers engagements and sanads The treaties were made with individual states, and although in certain matters of imperial concern some sort of uniform procedure is necessary, cases affecting individual states should be considered with reference to those states individually their treaty rights, their history and local circumstances and traditions, and the general necessities of the case as bearing upon them

Criticism of legal opinion

39 On the other hand we cannot agree with certain statements and arguments that occur in this opinion The relationship of the Paramount Power with the states is not a merely contractual relationship, resting on treaties made more than a century ago It is a living, growing relationship shaped by circumstances and policy, resting as Professor Westlake has said, on a mixture of history, theory and modern fact The novel theory of a para-

sphere of any such agreement, and in any case can only rest upon the doctrine which the learned authors of the opinion rightly condemn that the treaties must be read as a whole It is not in accordance with historical fact that when the Indian States came into contact with the British Power they were independent, each possessed of full sovereignty and of a status which a modern international lawyer would hold to be governed by the rules of international law In fact, none of the states ever held international status Nearly all of them were subordinate or tributary

to the Moghul empire, the Mahratta supremacy or the Sikh kingdom, and dependent on them Some were rescued, others were created by the British

Validity of usage and sufferance

40 We cannot agree that usage in itself is in any way sterile Usage has shaped and developed the relationship between the Paramount Power and the states from the earliest times almost in some cases as already stated from the date of the treaties them selves Usage is recited as a source of jurisdiction in the preamble to the Foreign Jurisdiction Act 1890 (53 and 54 Vict C 37) and is recognised in decisions of the Judicial Committee of the Privy Council Usage and sufferance have operated in two main directions In several case , where no treaty, engagement or sanad exists usage and sufferance have supplied its place in favour of the states In all cases usage and sufferance have operated to determine questions on which the treaties engagements and sanads are silent they have been a constant factor in the interpretation of these treaties engagements and sanads and they have thus consolidated the position of the Crown as Paramount Power

Pronouncement by Government of India, 1877

41 These important effects of the operation of usage and sufferance were pointed out by the Government of India in 1877 The paramount supremacy of the British Government it was then said, is a thing of gradual growth it has been established partly by conquest partly by treaty partly by usage and for a proper understanding of the relations of the British Government to the Native States regard must be had to the incidents of this *de facto* supremacy as well as to treaties and charters in which reciprocal rights and obligations have been recorded and the circumstances under which those documents were originally framed In the life of states as well as of individuals documentary claims may be set aside by overt acts and a uniform and long continued course of practice acquiesced in by the party against whom it tells whether *that party i e the British Government or the Native State must* be held to exhibit the relations which in fact subsist between them '

Statements opposed to historical fact

42 It is not in accordance with historical fact that paramountcy gives the Crown definite rights and impose upon it definite duties in respect of certain matters only *viz* those relating to foreign affairs and external and internal security unless those terms are made to cover all those acts which the Crown through its agents has considered necessary for imperial purposes for the good government of India as a whole the good government of individual states,

the suppression of barbarous practices the saving of human life, and for dealing with cases in which rulers have proved unfit for their position It is *not in accordance* with historical fact to say that the term subordinate co operation used in many of the treaties is concerned solely with military matters The term has been used consistently for more than a century in regard to political relations In these and other respects the opinion of counsel appears to us to ignore a long chapter of historical experience

Relationship between Paramount Power and States

43 What then is the correct view of the relationship between the states and the Paramount Power? It is generally agreed that the states are *sui generis* that there is no parallel to their position in history that they are governed by a body of convention and usage not quite like anything in the world They fall outside both international and ordinary municipal law but they are governed by rules which form a very special part of the constitutional law of the Empire Some sixty years ago Sir Henry Maine regarded their status as quasi international Professor Westlake regarded the rule which regulate their status as part of the constitutional law of the Empire * A similar view was expressed by Sir Frederick Pollock who held that in cases of doubtful interpretation the analogy of international law might be found useful and persuasive †

Sir Henry Maine on sovereignty

44 In a well known passage in his minute in the Kathiawar case (1864) Sir Henry Maine refers to the relationship of divided sovereignty between the Paramount Power and the states ' Sovereignty he wrote is a term which in international law indicates a well ascertained assemblage of separate powers or privileges The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the *right to make war and peace the right to* administer civil and criminal justice the right to legislate and so forth A sovereign who possesses the whole of this aggregate of rights is called an *independent* sovereign but there is not nor has there ever been anything in international law to prevent some of those rights being lodged with one possessor and some with another Sovereignty has always been regarded as divisible It may perhaps be worth observing that according to the more precise language of modern publicists sovereignty is divisible but independence is not

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* The Native States of India Law Quarterly Review Volume XXVI

† Law Quarterly Review XXVII 88 9

Although the expression 'partial independence' may be popularly used it is technically incorrect Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government"

Activities of Paramount Power.

45 We are concerned with the relationship between the Paramount Power and the states as it exists to-day, the product of change and growth It depends, as we have already said, upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice * As a general proposition, and by way of illustration rather than of definition, the activities of the Paramount Power may be considered under three main heads (1) external affairs (2) defence and protection, (3) intervention

External affairs

46 The Indian States have no international life They cannot make peace or war or negotiate or communicate with foreign states This right of the Paramount Power to represent the states in international affairs which has been recognised by the Legislature † depends partly on treaties but to a greater extent on usage That this right of the Paramount Power to represent the states in international affairs carries with it the duty of protecting the subjects of those states while residing or travelling abroad, is also recognised by the Legislature For international purposes state territory is in the same position as British territory, and state subjects are in the same position as British subjects The rights and duties thus assumed by the Paramount Power carry with them other consequential rights and duties Foreign states will hold the Paramount Power responsible if an international obligation is broken by an Indian State Therefore the Princes co-operate with the Paramount Power to give effect to the international obligations entered into by the Paramount Power For instance they surrender foreigners in accordance with the extradition treaties entered into by the Paramount Power, they co-operate with the Paramount Power to fulfil its obligations of neutrality, they help to enforce the duties of the Paramount Power in relation to the suppression of

* That these [illegible]

† 3 [illegible] Vict c 4[illegible] Preamble

the slave trade Since a *foreign* power will hold the Paramount Power responsible for injuries to its subjects committed in an Indian State, the Paramount Power is under obligation to see that those subjects are fairly treated Of these duties Professor Westlake very truly says that they are owed by the states to Great Britain "as the managing representative of the Empire as a whole," and that they consist in helping Great Britain to perform international duties which are owed by her in that character On the other hand the Paramount Power when making treaties, will, in view of special circumstances existing in the Indian States, insert reservations in order to meet these special circumstances In all such cases there is, in practice, no difference between the states and the Paramount Power but the states ask that they may be consulted where possible in advance before they are committed to action This request is in our opinion, eminently reasonable and should be accepted

Interstatal relations

47 Until quite recently the Paramount Power acted for the states not only in their relations with foreign countries, but also in all their relations with one another During the present century circumstances have combined to lead to greater intercommunication between the states But they cannot cede, sell, exchange or part with their territories to other states without the approval of the Paramount Power, nor without that approval can they settle interstatal disputes 'As *we do not allow the states to go to* war with one another we claim the right as a consequence, and undertake the duty, of preventing those quarrels and grievances which among really independent powers would lead to international conflict " This principle, stated by Sir Henry Maine in 1863, still holds good

Defence and protection.

48 The Paramount Power is responsible for the defence of both British India and the Indian States and, as such, has the final voice in all matters connected with defence, including establishments, war material, communications etc It must defend both these separate parts of India against foes, foreign and domestic It owes this duty to all the Indian States alike Some of the states contribute in different ways to the cost of this defence by the payment of tribute by the assignment of lands, by the maintenance of Indian States Forces All the states rallied to the defence of the Empire during the Great War, and put all their resources at the disposal of the Government But, whether or not a state makes a contribution to the cost of defence, the Paramount Power

is under a duty to protect the states It follows from this duty of protection first, that the British Government is bound to do everything really necessary for the common defence and the defence of the states secondly, that the states should co operate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of that duty, thirdly, that they should co operate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other states These obligations are generally accepted and the states work together with the British Government to their utmost ability It follows that the Paramount Power should have means of securing what is necessary for strategical purposes in regard to roads, railways aviation, posts telegraphs, telephones, and wireless cantonments forts passage of troops and the supply of arms and ammunition

Princes and people

49 The duty of the Paramount Power to protect the states against rebellion or insurrection is derived from the clauses of treaties and sanads from usage, and from the promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes This duty imposes on the Paramount Power correlative obligations in cases where its intervention is asked for or has become necessary The guarantee to protect a Prince against insurrection carries with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances, and an obligation to prescribe the measures necessary to this result

Popular demands in states

50 The promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him, and to substitute another form of government If these attempts were due to misgovernment on the part of the Prince, protection would only be given on the conditions set out in the preceding paragraph If they were due, not to misgovernment, but to a widespread popular demand for change, the Paramount Power would be bound to maintain the rights privileges and dignity of the Prince, but it would also be bound to suggest such measures as would satisfy this demand without eliminating the Prince No such case has yet arisen, or is likely to arise if the Prince's rule is just and efficient, and in particular if the advice given by His Excellency Lord Irwin to the Princes, and accepted in principle by their Chamber, is adopted in regard to a fixed privy purse, security of tenure in the public services and an independent judiciary

Intervention.

51 The history of intervention has already been described. Intervention may take place for the benefit of the Prince, of the State of India as a whole

For benefit of Prince.

52 Lord Canning's adoption sanads of 1862 recited the desire of the Crown that the Governments of the several Princes and Chiefs in India who now govern their territories should be perpetuated, and that the representation and dignity of their houses should be continued" In order to secure the fulfilment of this desire the Paramount Power has assumed various obligations in respect to matters connected with successions to the houses of the Ruling Princes and Chiefs. In the first place, it was laid down in 1891 that "it is the right and the duty of the British Government to settle successions in subordinate Native States Every succession must be recognised by the British Government, and no succession is valid until recognition has been given" In 1917, however, this view of the position was modified and in a "Memorandum on the ceremonies connected with successions" issued by the Government of India, it was laid down that where there is a natural heir in the direct line he succeeds as a matter of course and it was arranged that in such cases the recognition of his succession by the King-Emperor should be conveyed by an exchange of formal communications between the Prince and the Viceroy In the case of a disputed succession, the Paramount Power must decide between the claimants having regard to their relationship, to their personal fitness and to local usage In the second place, Lord Canning's sanads guaranteed to Princes and Chiefs the right, on failure of natural heirs, to adopt a successor, in accordance with Hindu or Muhammadan Law But such adoption in all cases requires the consent of the Paramount Power In the third place, the Paramount Power has, in the case of a minority of a Ruling Prince, very large obligations to provide for the administration of the state, and for the education of the minor These obligations obvious and admitted, of the Paramount Power to provide for minorities afford, perhaps, as strong an illustration as any other of the way in which usage springs up naturally to supply what is wanting in the terms of treaties that have grown old Usage, in fact, lights up the dark places of the treaties

For benefit of state

53 The conduct of the Prince may force the Paramount Power to intervene both for the benefit of the state and the benefit of the successors to the Prince It is bound to intervene in the case

is under a duty to protect the states It follows from this duty of protection first that the British Government is bound to do every thing really necessary for the common defence and the defence of the states secondly, that the states should co operate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of that duty, thirdly, that they should co operate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other states These obligations are generally accepted and the states work together with the British Government to their utmost ability It follows that the Paramount Power should have means of securing what is necessary for strategical purposes in regard to roads railways aviation posts telegraphs telephones and wireless cantonments forts passage of troops and the supply of arms and ammunition

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British jurisdiction in certain cases

56 Some of the treaties contain clauses providing that British jurisdiction shall not be introduced into the states and it is the fact that the states are outside the jurisdiction of the British courts and that British law does not apply to their inhabitants, which is the most distinct and general difference between the states and British India Nevertheless the Paramount Power has found it necessary in the interests of India as a whole to introduce the jurisdiction of its officers in particular cases such as the case of its troops stationed in cantonments and other special areas in the Indian States European British subjects and servants of the Crown in certain circumstances

Impossible to define paramountcy

57 These are some of the incidents and illustrations of paramountcy We have endeavoured as others before us have endeavoured to find some formula which will cover the exercise of paramountcy and we have failed as others before us have failed to do so The reason for such failure is not far to seek Conditions alter rapidly in a changing world Imperial necessity and new conditions may at any time raise unexpected situations Paramountcy must remain paramount it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the states Nor need the states take alarm at this conclusion Through paramountcy and paramountcy alone have grown up and flourished those strong benign relations between the Crown and the Princes on which at all times the states rely On paramountcy and paramountcy alone can the states rely for their preservation through the generations that are to come Through paramountcy is pushed aside the danger of destruction or annexation

Princes should not be handed over without their agreement to new government in India responsible to Indian legislature

58 Reviewing this the states demand that without their own agreement the rights and obligations of the Paramount Power should not be assigned to persons who are not under its control for instance an Indian government in British India responsible to an Indian legislature If any government in the nature of a dominion government should be constituted in British India such a government would clearly be a new government resting on a new and written constitution The contingency has not arisen we are not directly concerned with it the relations of the states to such

a government would raise questions of law and policy which we cannot now and here foreshadow in detail. We feel bound, however, to draw attention to the really grave apprehension of the Princes on this score, and to record our strong opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes, the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature.

III.—FINANCIAL AND ECONOMIC RELATIONS BETWEEN BRITISH INDIA AND THE STATES MACHINERY.

Importance of question

59 The second part of our enquiry is the more immediately practical, opening up as it does the financial and economic relations between British India and the states In our tours round the states we were impressed with the importance of this problem On all sides we found demands for better and more expensive administration These demands originate with the desire of the Princes themselves the claims of their subjects and the impact of rising standards from adjacent territories of British India

Disabilities of states

60 The disabilities under which the Princes feel that they lie fall under two main heads (1) disabilities in regard to their relations with British India and (2) disabilities in regard to their relations with the Political Department We will deal with them in this order

States and British India

61 The Princes do not wish to interfere in matters affecting British India they recognise ' the obligation of mutual abstention " Their main contention is that where their interests and those of British India collide or conflict they should have an effective voice in the discussion and decision of the questions that may arise They recognise the interdependence of British India and the states they realise the necessity for compromise but they claim that their own rights should receive due recognition They contend that in the past their rights of internal sovereignty have been infringed unnecessarily, *and that their case is not sufficiently* presented or considered under the existing system

Present constitution of Government of India

62 Under that system the agent for the Crown is the Governor General in Council On that council there are six members in addition to the Commander-in Chief who deals with military matters a Home Member a Finance Member a Law Member a Member for Railways and Commerce a Member for Industries and Labour and a Member for Education Health and Land

There is no political member The Viceroy holds the portfolio of the Political Department When a political case goes before council, the Political Secretary attends the meeting to state and explain it, but he cannot discuss it with the members on equal terms and he cannot vote upon it Where the interests of the states are opposed to the interests of British India there must of necessity—such is the contention of the Princes—be a solid body of opinion predisposed in favour of British India

Political member or members of Council not recommended.

63 We think that there is foundation for the complaints of the Princes Indeed it has long been recognised that in this respect the states are at a disadvantage At different times in the last thirty years and more a proposal has been considered that there should be a political member of the Governor General s Council There are two main objections to this proposal (*a*) that the Princes attach great importance to direct relations with the Viceroy as representing the Crown (*b*) that the appointment of a political member would still leave the states in a large minority in the voting power of the council Objection (*a*) is in our opinion insurmountable Once a political member of the Governor-General's Council is appointed direct personal relations with the Viceroy will inevitably decline Objection (*b*) is to some extent met by a proposal to have two or more political members of the Governor General s Council This remedy would increase the difficulty under (*a*) and there would not be enough work for more than one political member, let alone any question of the effect on British India of such a radical alteration of the existing constitution After careful consideration we are unable as others before us have been unable to recommend the creation of a political membership of Council The disadvantages of any such proposal in our opinion outweigh the advantages We are greatly impressed by the importance which the states attach to direct relations with the Viceroy and by the immense value of the Viceroy's personal influence with the Princes

Unauthorised scheme of reform

64 A scheme was published in India in April 1928 purporting to represent the views of certain Princes The publication at that time was unauthorised but a scheme on similar lines was revived and put before us in the form adopted by the Council of the European Association in their memorandum to the Indian Statutory Commission The original scheme interposed between the Political Department and the Viceroy a council of six members three Princes or state ministers two English members with no

previous experience of India and the Political Secretary This states council would become the executive body directing the Political Department In matters of common concern to British India and the states this states council would meet the existing Governor General s Council and endeavour to arrive at a joint decision In the event of a difference of opinion the Viceroy and Governor General would decide In order to reconcile the Princes to the loss of sovereignty within their individual states numerous safeguards were devised which would have stripped the new body of any real power of effective action In addition it was part of the scheme to establish a supreme court with powers to settle disputes between the new council and individual states or between individual states and to pronounce on the validity of legislation in British India affecting the states

Objections to scheme

65 The objections to this scheme apart from any question of its cost are many The following only need be mentioned —

(1) It would put the Viceroy out of touch with the Princes, a matter to which as already stated the Princes attach the greatest importance

(2) British India could hardly be expected to join the states on the basis of equal voting power in view of their relative size and population not to mention any question of relative advancement

(3) A Prince could hardly join an executive body of the kind proposed without ceasing for the time to be ruler in his own state and many Princes would object to be placed under other Princes or ministers of their own or other states

(4) There would be quite insufficient work for such a body, since the number of cases of any real importance arising in any year are very few

(5) Such a council would inevitably lead to greater interference in the internal affairs of individual states, especially of the smaller states

(6) There would be a large surface of possible conflict between the new states council and the existing Chamber of Princes and its Standing Committee This is recognised but not sufficiently provided for by the safeguards of the scheme

Difficulties of federation

66 No help can in our opinion, be derived from any such scheme Indeed it would seem quite clear that any schemes of what may be called perhaps loosely a federal character are at

present wholly premature The states have not yet reached any real measure of agreement among themselves Hence, it is that no constructive proposal has been placed before us Hence it is that the Chamber of Princes must for the present remain consultative Hence it is that no action has been taken on the recommendation of the Montagu Chelmsford report that the proposed Council of Princes and the Council of State, or the representatives of each body, should meet in consultation on matters of common concern Criticism there is in abundance but there is no concrete suggestion of reform We have been told often that the system is wrong but no alternative system has been suggested We are convinced that the system is not greatly at fault, but some adjustments of it to modern conditions are required

Viceroy to be agent for Crown

67 For the present it is a practical necessity to recognize the existence of two Indias and to adapt machinery to this condition To this end we advise that in future the Viceroy—not the Governor General in Council as at present—should be the agent for the Crown in all dealings with the Indian States This change will require legislation but it will have three distinct advantages first it will gratify the Princes to have more direct relations with the Crown through the Viceroy, secondly it will relieve them of the feeling that cases affecting them may be decided by a body which has no special knowledge of them may have interests in opposition to theirs, and may appear as a judge in its own cause and thirdly it will in our opinion lead to much happier relations between the states and British India and so eventually make coalition easier

Change in practice not great

68 In practice the change proposed will not be so great as may at first sight appear nor will it throw a burden of new work on the Viceroy The Viceroy holds the political portfolio at present and the great bulk of the work of the Political Department is disposed of by him with the help of the Political Secretary It is at the Viceroy's discretion whether a political case should go before council On all ceremonial occasions the Viceroy alone represents the states The Royal Proclamation inaugurating the Chamber of Princes dated the 8th February, 1921, was addressed by His Imperial Majesty the King Emperor to "His Viceroy and Governor General and to the Princes and Rulers of the Indian States"

Committees in matters of common concern

69 There will of course be matters of common concern to British India and the states in which the interests of the two may

clash The natural procedure in such cases when the Political Department and another Department of the Government of India cannot agree, will be for the Viceroy to appoint committees to advise him On such committees both British India and the states may be represented The appropriate departmental Standing Committees of the Legislative Assembly may meet the Standing Committee of the Chamber of Princes, or a technical committee of the Chamber of Princes consisting wholly or partly of ministers of states, it being often difficult for the Princes themselves to leave their states A convention of this kind may well grow up, beginning, if desired, in cases where legislation is in prospect

Formal committees in cases of disagreement.

70 In cases in which such committees fail to agree the Viceroy may appoint a more formal committee consisting of a representative of the states and a representative of British India with an impartial chairman of not lower standing than a High Court judge Such a committee would offer advice only, although ordinarily such advice would be taken In the event of their advice not being taken the matter would be referred for decision by the Secretary of State This procedure would be specially suitable in cases of clashing interests in financial or justiciable questions, such as over maritime customs, or the development of ports claims to water, etc Committees of this kind were successfully appointed in disputes between the states and British India some twenty years ago and were recommended by the Montagu-Chelmsford report

Recommendation of Montagu-Chelmsford report

71 Paragraph 308 of that report runs as follows —

> ' Our next proposal is concerned with disputes which may arise between two or more states, or between a state and a local government or the Government of India, and with a situation caused when a state is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives In such cases there exists at the present moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues, such as might satisfy the states particularly in cases where the Government of India itself is involved, that the issues have been considered in an independent and impartial manner Whenever, therefore, in such cases the Viceroy felt that such an inquiry was desirable, we recommend that he should appoint a commission, on which both parties would be represented, to inquire into the matter in dispute and to report its conclusions to him If the Viceroy were unable to accept

the finding the matter would be referred for decision by the Secretary of State The commission that we have in mind would be composed of a judicial officer of rank not lower than a High Court judge and one nominee of each of the parties concerned '

Failure to use accepted procedure

72 This procedure was accepted by the Government of India in Foreign and Political Department Resolution No 427 R dated the 29th October 1920 but, unfortunately we think has never been acted upon We attach the greatest importance to the free adoption of this procedure in current cases It will in our opinion, satisfactorily dispose of all ordinary differences of opinion as they arise

States and Political Department

73 The disabilities of the Princes in regard to their relations with the Political Department present fewer difficulties There must be a Paramount Power and there are many questions which the Paramount Power alone can decide We think it vitally necessary that there should be in the future constant full and frank consultation between the Political Secretary and the Standing Committee of the Chamber of Princes or their technical advisers and in order that this may not be left to chance we recommend that there should be a fixed number of meetings on fixed dates not less than three in every year Excellent results followed such consultation in the measures taken to codify political practice As already stated of the twenty three and more points in dispute nine were settled satisfactorily to all concerned We recommend the continuance of this procedure Its success was arrested mainly because after discussion with the Standing Committee the resultant conclusions were circulated to local governments and political officers for opinion with inevitable delay and re opening of questions In our opinion there will be no difficulty in coming to satisfactory compromises provided that effect is given to such compromises without further delay Political officers and representatives of other departments and of local governments can when necessary be associated with the Political Secretary in the course of the discussions But the resultant conclusions should go straight to the Viceroy for his decision without further circulation for opinion or discussion The views of those Princes who remain detached from the Chamber may be obtained separately or subsequently

Services of Political Department

74 We have formed the highest opinion of the work of the Political Department It has produced a long series of eminent

men whose names are regarded with affectionate esteem throughout the states The Princes themselves as a body recognise that they owe much of their present prosperity and progress to the friendly advice and help of political officers and, it may be added, to the education which they have received at the Chiefs' Colleges Their relations with political officers are a credit to both The position of a political officer is by no means an easy position It calls for great qualities of character, tact, sympathy, patience and good manners He has to identify himself with the interests of both the Paramount Power and the Princes and people of the states and yet he must not interfere in internal administration There have been failures and harsh and unsympathetic political officers no doubt It is not possible that any system can wholly provide against such a result But the mischief done by one unsuitable officer is so great that no effort should be spared to get the best men possible

Recruitment and training of political officers

75 At present political officers are recruited into one department for foreign work (work on and beyond the frontiers) and for political work (work in the states) from the Indian Civil Service and the Indian Army These sources of supply are now limited Both the Indian Civil Service and the Indian Army are shorthanded Thoughtful political officers are concerned as to the future recruitment for their department They think that the time has come to recruit separately from the universities in England for service in the states alone We commend this suggestion for consideration We realise the difficulties of maintaining small services but the importance of getting the best men possible is so great that no difficulties should be allowed to stand in the way It is also very important to train them properly when appointed Under existing rules they learn administrative work in a British district and thereafter pass examinations in Lyall's "Rise and expansion of the British Dominion in India,' Lyall's "Asiatic studies" Tod s "Rajasthan," Malcolm's "Central India ' Sleeman's "Rambles and Recollections ' the Introduction to Aitchison's Treaties, and the Political Department Manual All this is valuable but we advise also a short course under a elected political officer with lectures on Aitchison's Treaties and on political ceremonial, and special study of the language and customs of the people and all those graceful courtesies of manner and conduct to which Indians attach supreme importance It might also be possible to arrange at some early period in their career to attach the young officers to our embassies or ministries for a further short course of training

Position of Political Secretary.

76 It has been represented to us that the pay and precedence of the Political Secretary should be raised so as to give him a special position among the Secretaries to Government and thus assist him to approach other departments with added weight and authority

New spirit needful

77 Our proposals are designed to remedy existing difficulties with the least possible disturbance It must be remembered that the states are a very heterogeneous body at varying stages of development conservative and tenacious of traditions in an unusual degree It is important to build on existing foundations and to allow conventions to grow up A spirit of joint action will it is hoped arise between British India and the states It may be too much to hope that Ephraim will not envy Judah and that Judah will not vex Ephraim but India is a geographical unity and British India and the states are necessarily dependent on one another

Door to closer union left open

78 *We have left the door open* to closer union There is nothing in our proposals to prevent the adoption of some form of federal union as the two Indias of the present draw nearer to one another in the future There is nothing in our proposals to prevent a big state or a group of states from entering now or at any time into closer union with British India Indeed in the next section of our report we make suggestions which if adopted may have this result These things may come But it has been borne in upon us with increasing power as we have studied the problems presented to us that there is need for great caution in dealing with any question of federation at the present time so passionately are the Princes as a whole attached to the maintenance in its entirety and unimpaired of their individual sovereignty within their states

IV.—FINANCIAL AND ECONOMIC RELATIONS BETWEEN BRITISH INDIA AND THE STATES. SPECIFIC PROPOSALS.

General treatment of question.

79 The cases put before us are many and various India has long memories and it might almost be said that we have become a target for the discharge of a century of hopes unrealized Some of these exhumations raise questions that are in no sense financial or economic Some are peculiar to one or two states Some involve discussions that are highly technical Some have been under consideration for several years A whole literature has in fact grown up We do not think it necessary to enter into great detail It will be preferable to deal in a general way with points of general interest If our recommendations as to general solutions and machinery are accepted there will be no difficulty in settling individual cases of a more particular character In making our proposals we have kept in mind three points especially, a due regard for the internal sovereignty of the states, the need of reciprocity between them and British India and the natural and legitimate effects of prescription

Maritime customs

80 The most important claim of the states is for a share in the maritime customs, the proceeds of which are enjoyed at present exclusively by British India The Princes maintain that the maritime customs paid on goods imported into their territory are in effect transit duties that the British Government in the past has persuaded them to abolish transit duties in their own states on the ground that they are injurious to the trade of India as a whole, that the British Government by its maritime customs duties imposes an indirect tax on the subjects of the states, and that it is an elementary principle that revenue derived from any taxation is the due of the government whose subjects consume the commodities taxed Many states recognize that in view of their number, scattered all over India, it is not possible to claim free transit in bond to destination in the states, they recognize also that consumption per head in the states is less than consumption per head in British India*, but they claim a share of the imperial revenue derived from maritime customs to be arranged with individual states on an equitable basis

* [illegible] that about one-fifth of the whole customs revenue is [illegible] who have adopted a European style of liv- [illegible] the states is probably two-thirds of the

Rights of the case

81 We have no doubt that customs duties are not transit duties a view entirely accepted by Sir Leslie Scott, that every country has from its geographical position the right to impose customs duties at its frontier that such customs duties have been imposed by British India and indeed by the maritime or frontier Indian States for a long period without objection or protest on the part of the inland states Separate conventions or agreements have been made by the British Government with maritime or frontier states such as Travancore Cochin Baroda the leading Kathiawar states and Kashmir thereby recognising the rights and advantages secured to those states by geographical position Hyderabad has a separate treaty the interpretation of which is under discussion The Barcelona Convention (1921) has been referred to in support of the claim of the states Under that convention the signatories agree subject to certain conditions to freedom of transit of goods across territory under the sovereignty or authority of any one of the contracting states But article 15 of that convention expressly excludes states in the position of the Indian States * Most inland states in India still impose their own import and export duties Mysore being the big exception In many states the import and export duties yield a share of the state revenue second only to land revenue especially in areas of deficient rainfall where the land revenue is a very variable item In the aggregate these state duties amount to four and a half crores of rupees or about £3 375 000 a year On principle then we hold that British India is fully entitled to impose maritime customs for the purposes of India as a whole It is a central head of revenue in which the Provinces of India have no share

Equity of the case

82 We consider however that the States have a strong claim to some relief So long as the maritime customs were on a low level (about 5 per cent *ad valorem*) there was no substantial grievance If the British Government imposed duties at the ports the states imposed duties on their frontiers Each treated the other as the other treated it But in the year 1921 22 the maritime customs were greatly raised under many heads and later on a policy of discriminating protection was adopted in British India with the result that the revenue from maritime customs has risen from some five to nearly fifty crores of rupees The states were not consulted in regard to this policy The majority of them derive no

* Article 15 runs as follows It is understood that this statute must not be interpreted as regulating in any way rights and obligations *inter se* of territories forming part or placed under the protection of the same sovereign state whether or not these territories are individually members of the League of Nations

benefit from protection and their subjects have to pay the enhanced price on imported goods, in effect a double customs duty, their taxable capacity being reduced to the extent of the maritime duty This in our opinion is a real and substantial grievance which calls for remedy The degree and amount of the relief in individual states however, requires careful examination If the states are admitted to a share of the customs revenue of British India, British India may legitimately claim that the states should bear their full share of imperial burdens on the well established principle that those who share receipts should also share expenditure

Zollverein

83 Undoubtedly the ideal solution would be a zollverein combined with the abolition of internal customs in the states themselves There would then be free transit of goods over India once they had paid maritime customs During Lord Reading's viceroyalty a suggestion for such a zollverein was drawn up—but not put forward—on the following lines —

(1) the adoption of a common tariff administered by the officers of the Government of India even in maritime states

(2) the abolition of all inland customs

(3) the division of the customs revenue among British India and the different Indian States according to population and

(4) the association of representatives of the Indian States with the Indian Legislature in the determination of policy

Difficulties of zollverein

84 Such a zollverein would be of great advantage to India as a whole and large sacrifices would be justified in order to secure it Many states appear unwilling at present to enter into a zollverein They attach importance to their customs as a sign of sovereignty They cannot afford to give up the revenue from their customs without guarantees against loss and they realize that owing to reasons of budget secrecy they can never be fully consulted in regard to changes in the tariff from year to year It may be possible to overcome these objections by liberal financial treatment As already stated some 4½ crores of rupees are raised by the states in their own local import and export duties and it seems probable that on any calculation their share of the maritime customs would be considerably larger than this In any case it is not impossible that individual large states would come into a zollverein on terms and no obstacle should, in our opinion be placed in the way of such a solution

Financial settlement.

85 The questions involved are very intricate The incidence of the state import and export duties varies from state to state One state depends mainly on the former, its neighbour on the latter We recommend that an expert body should be appointed to enquire into (1) the reasonable claims of the state or group of states to a share in the customs revenue and (2) the adequacy of their contribution to imperial burdens The question of a zollverein would come at once before such a body The terms of reference would be discussed with the Princes who would, of course be represented on the enquiring body In the result a financial settlement would be made between the Imperial Government and the state or group of states on the lines of settlements made in the past between the Imperial and Provincial Governments Such a procedure would no doubt take time Much new ground will have to be broken

Claims of states under other heads

86 In making this settlement *the reasonable claims of the states* under other heads could also be considered It may be that on a financial settlement of this kind will in time grow up closer political relations between the states and British India

States to be consulted

87 The states unquestionably have a claim to consultation in matters of general policy as to maritime customs In practice they cannot share in year to year alterations of the tariff in regard to which secrecy is necessary, and the decision of which must rest with the Imperial Government It would seem sufficient at present to lay down the general principle of consultation when possible and to insist that the Tariff Board should consult the Political Department and the states whenever their interests are affected The question of the representation of Indian States on the Tariff Board was definitely rejected by the Indian Fiscal Commission for the reasons given in paragraph 301* of their report

* '301 Suggestions have been [illegible] repre-
sentation on the Tari[illegible]
tion which we prop[illegible]
Tariff Board should [illegible]
of representatives from provinces or representatives of particular interests or
[illegible] The
[illegible]

X

Concession to members of the Chamber in their own right

88 In the case of Princes having a salute of 21 or 19 guns a concession is made by which all goods imported for their personal use and the use of their families are exempt from customs duty This differentiation is not unnaturally felt to be invidious We recommend that this exemption should be extended to all Princes who are members of the Chamber of Princes in their own right Such a concession would grant some immediate relief in a form particularly acceptable to the Princes

Railways

89 No financial or economic question of a general character arises in connection with railways It has been suggested, but not argued, that as the railway budget makes an annual contribution to imperial general revenues from its surplus the states should have a share It is admitted that for a long time the railways were run at a loss the deficit being made good by the tax payer of British India Most of the railways were built from capital raised in the open market with or without a guarantee by the Government of India of a minimum rate of interest Some states financed the construction of local lines or blocks of lines on terms arranged between them and the Imperial Government Some states are ordinary shareholders in the railways In the old days the states usually gave the land and materials stone, ballast, wood, etcetera, without receiving compensation in cash, in consideration of the great benefits accruing to the states from being opened up by railways Under recent arrangements the states receive compensation We cannot find that the states have any reasonable claim to a share of the annual profits now made by the railways A general control of railway construction must in the interest of the development of India as a whole lie with the Paramount Power Questions regarding the construction and maintenance of railways were settled in 1923 by agreement between the states and the Government of India The question of jurisdiction however remains and this has been left over for our advice The Princes feel keenly that they have been unnecessarily deprived of jurisdiction of all kinds on railways traversing their states There are two classes of lines (*a*) railways of strategic importance and important non strategic railways (*b*) other railways The former are in the main through running railways the latter in the main are branch lines

Strategic railways and important non-strategic railways

90 It is clearly necessary in the interests of India as a whole of the travelling public and of trade that all measures required

for the proper working of the arterial railways should be concentrated in the hands of one authority and that criminal jurisdiction should be continuous and unbroken Some of the through railways pass through a large number of states the Bombay Baroda and Central India Railway main line for instance, crosses no less than 38 frontiers between Delhi and Bombay

Civil jurisdiction on railways

91 A claim has been put forward that civil jurisdiction should be restored to the states on these strategic and important non strategic lines After full consideration we are unable to recommend this course of action The interests of the public in British India and the states alike are involved The trade of the country requires that there should be continuous jurisdiction for civil suits, *e g for damages for loss of or injury to goods and the like* An impossible situation injurious to both British India and the Indian States would be created if traders did not know at once where and in what courts to sue We shall refer later to financial questions

Other railways

92 As regards other railways we recommend that the states should be given back all jurisdiction criminal and civil on the following terms

(1) that the state or a company or individual or association of individuals authorised by the state is either the owner of the railway or at least has a substantial interest in it and works it

(2) that the state possesses proper machinery for the administration of justice

(3) that adequate control over the working and maintenance of the line is retained either by the application of an enactment and rules similar to the Indian Railways Act and the rules made thereunder, or otherwise

(4) that the state will grant permission for such inspections of the line by Government railway officials as may be considered necessary

These terms were agreed to in discussion between the Standing Committee of the Chamber of Princes and representatives of the Political and Railway Departments in 1924 They represent a reasonable compromise

Financial questions

93 Certain sums are received in railway areas in Indian States for income tax customs excise licences sale of grass and the like These at present are credited to the railways and not to the states

While we do not advocate any change in the system of realising these revenues—it would not be for the public convenience to do so—we are of opinion that any balance of receipts arising from the state or state subjects, after reasonable deductions for cost of collection, etc , should be handed over to the states concerned This matter should admit of easy adjustment Cases of dispute might be settled by the committee recommended in paragraph 85 above

Mints and coinage

94 There are few subjects on which the states feel more strongly than in regard to mints and currency In the course of the last half century much pressure has been brought to bear upon states especially during minorities to close their mints and to accept the imperial currency Certain states will retain their own mints and their own currencies and others who once coined their own money claim the right to re open their mints We are strongly of opinion that the multiplication of different currencies in India is hostile to the best interests of the states and to the country as a whole We have heard of one state where the currency has been manipulated with such results that trade has been seriously affected Claims have also been made by the states that they should share the profits of the currency In regard to this we have been informed that as far as metallic currency is concerned it is doubtful whether there are any appre ciable profits and that on the paper currency the profits are due to the credit of British India The advantages of the imperial currency are so obvious that we do not consider that there is a substantial claim to any relief, but some allowance might be made on this account in any financial settlement that may be made with individual states or groups of states

Loans and relations with capitalists and financial agents

95 In order to protect the states financially it was considered necessary in the past to formulate procedure in regard to loans and relations with capitalists and financial agents At the time this was very necessary owing to lack of knowledge and experience in the states With the advance of the states the need for protection is less than it was and the time has come to revise the rules This question has been the subject of discussion between the Political Department and the Standing Committee and we understand that an agreement is in sight In the interest of India as a whole the Government of India must keep a certain measure of control of the loan market

Salt

96 From early times in succession to the Moghal empire the British Government decided to create a salt monopoly for purposes of revenue In pursuance of that object they stopped the manufacture of salt in the provinces of British India and entered into treaties and engagements with the states with a view to the suppression and prohibition of manufacture of salt within their territories in return for compensation The states claim that the treaties were obtained by pressure and that the compensation given at the time was inadequate then and has become still more inadequate now We are not prepared to recommend any general revision of arrangements which on the whole have worked well Treaties and engagements have been made and there is no more reason why these treaties and engagement should be revised than the political treaties and engagements of more than a century ago No means exist now of ascertaining whether the compensation was reasonable at the time The States are in the same position financially as the provinces of British India The Government of British India has incurred large expenditure in establishing its monopoly and is in our opinion entitled broadly to the profits Any minor claims of modern origin put forward by individual states, and claims by the maritime states to export salt under proper safeguards to countries outside India *e g* Zanzibar should in our opinion be sympathetically examined and disposed of in the ordinary course

Posts

97 The efficiency and security of the postal arrangements of India are matters of imperial concern in which the public in British India and the states are equally interested The services of the imperial post office are enjoyed by the Indian States in common with the rest of the country Fifteen states have their own postal departments and are outside postal unity Five of these states have conventions with the imperial post office and work in co-operation with it In the other ten states the greater part of the correspondence within the state is carried by the local post offices while branches of the imperial post office exist at most important places and carry correspondence across the state frontiers In most of the convention states imperial post offices exist only on territory which is British for purposes of jurisdiction such as railway stations the residency area etc The state postage stamps of the five convention states are valid for correspondence to any part of India but not overseas while the stamps of the other ten states are not valid anywhere outside their respective states The existing arrangements work well and it would not be in the interests of the public in either British India or the

states to alter them We do not see our way to recommend an extension of the convention system as desired by certain states In the five convention states no questions arise that cannot be settled in the ordinary course as at present In the ten states where the British and State postal systems exist side by side questions may arise as to the opening of new post offices This is at present a matter of joint discussion and we recommend no change

Telegraphs, wireless and telephones

98 Arrangements for the construction and maintenance in the states of telegraph lines the opening of telegraph offices, of wireless stations and of telephone exchanges were settled after discussion with the Standing Committee in a series of Government Resolutions a few years ago and nothing remains for us to deal with under this head

✗ Financial claims in regard to posts and telegraphs

99 The accounts of the posts and telegraphs are now kept on a unified commercial basis The states claim a share in the profits We are informed that there are no divisible profits The profits are devoted to the reduction of capital charges and the extensions and improvements of the existing system So long as the states get their full share of the benefits to which any profits are devoted they have no legitimate cause of complaint On this question they are entitled to full information and we are informed that there will be no objection to giving it The matter is one that can best be settled by periodic conference and rendering of accounts (say every three years) between the representatives of the Princes and officers of the imperial department

✓ Profits of savings banks

100 As part of its activities the postal department has opened savings banks in some of its post offices in the states Some states claim that this arrangement should cease or that the profits of the savings banks should be made over to them This claim raises a very difficult question The attraction of the post office savings bank is undoubtedly the credit of the British Government For administrative reasons the management of the savings banks must follow the management of the post offices and the managing authority is entitled to the bulk of any profit on the transaction In the interests of the people of the states it is most desirable to encourage deposits in savings banks In cases where the profit is considerable some share of it might be transferred to the states as part of the financial settlement suggested above

Service stamps

101 A claim is also advanced that state correspondence should be carried free within the state or that a liberal allowance of service stamps should be allotted to the states for this purpose Allowances of service stamps are given in certain cases on no apparent principle We recommend a settlement of this question once for all on definite principles

Mail robbery rules

102 Objection has been taken to the mail robbery rules Under these rules every state is made responsible for the secure passage of the imperial letter and parcel post through its territory and when a robbery of the mails takes place the state is required to pay up the full value of whatever is taken or destroyed by the robbers, and also to pay compensation to the carriers of the mail or to their families in the event of the carriers being injured or killed in connection with the robbery Various subsidiary instructions in regard to procedure also find a place among the rules The rules date from the year 1866 they were revised in 1885 We are doubtful whether these rules are any longer necessary In any case they are in need of thorough revision on more modern lines It should not be difficult to settle this question by conference in the ordinary way The procedure in the case of states with efficient police administration should in our opinion, approximate to that followed in regard to provinces in British India

Opium

103 We are not in a position to make any recommendations in regard to the opium question A committee has been examining certain aspects of this question and its report has not yet reached us This is essentially a case in which the states must bear their share of an imperial burden imposed on India as a whole in the interests of humanity and civilisation It is not within practical politics to ask the Indian tax payer to grant the states compensation in this matter when he has suffered so heavily himself

Excise

104 No general question is raised in connection with excise Owing to the interlocking of the territory of British India and the states many questions of detail must arise in various parts of India and are settled locally A strong complaint has been made to us in connection with the supply of *charas* by the Punjab to the Rajputana and Punjab States The contention is that the Punjab

Government levies a high excise duty on *charas* imported from Central Asia through Kashmir into the Punjab and refuses to grant any rebates on the amounts despatched by it to the states The states cannot get the *charas* which they require except through the Punjab Government They allege that the Punjab Government grants rebates of duty to the Government of the United Provinces on all *charas* transmitted there and that the Bombay Government refunds to the states to which it supplies the drug 13/14ths of the duty 1/14th being kept for incidental expenses Excise is a transferred subject under a provincial ministry We understand that there is a proposal that the Government of India should assume central responsibility for the supply of *charas* to the Indian States Whether this proposal be adopted or not we think that the states concerned have a real grievance in the matter which calls for remedy

Miscellaneous claims

105 Our attention has been drawn to certain alleged disabilities of the Princes in connection with restrictions on the acquisition by them of immovable property in British India restrictions on the supply of arms and ammunition, restrictions on the employment of non Indian officers, inequality of arrangements in connection with extradition, refusal to recognise Indian state officials as public servants, derogation from the traditional dignity of rulers the position of cantonments and enclaves within the boundaries of the states None of these fall within our terms of reference We feel that there is a good deal to be said on both sides in many of these questions and that the questions themselves can easily be resolved into the terms of an agreement under the procedure which we have outlined in section III above The question of ports in Kathiawar and the restoration of the Viramgam customs line is unquestionably *financial and economic* but it is still *sub judice*

General conclusions

106 It only remains to summarise our conclusions There are two Indias under different political systems, British India and the Indian States The latter differ so greatly among themselves that uniform treatment of them is difficult, if not impossible Treaties, engagements and sanads where they exist are of continuing valid force but have necessarily been supplemented and illumined by political practice to meet changing conditions in a moving world We have traced and analysed the growth of paramountcy Though it has already lost and should continue to lose any arbitrary character in full and open discussion between the Princes and the Political Department, it must continue to be paramount and therefore it must be left free to meet unforeseen circumstances as they arise

We find that the relationship between the Princes and the Paramount Power has on the whole been harmonious and satisfactory No practical proposals for new machinery have been placed before us but we have indicated changes in procedure, based on experience, which should lead to the removal of grievances and the settlement of outstanding questions In particular we recommend that the Viceroy not the Governor General in Council, should in future be the agent of the Crown in its relations with the Princes, and that important matters of dispute between the states themselves between the states and the Paramount Power, and between the states and British India should be referred to independent committees for advice We have suggested methods for recruiting and training officers of the Political Department to which we attach great importance We have indicated ways of adjusting political and economic relations between British India and the states We hold that the treaties engagements and sanads have been made with the Crown and that the relationship between the Paramount Power and the Princes should not be transferred without the agreement of the latter, to a new government in British India responsible to an Indian legislature But we have left the door open for constitutional developments in the future While impressed with the need for great caution in dealing with a body so heterogeneous as the Indian Princes so conservative so sensitive so tenacious of internal sovereignty we confess that our imagination is powerfully affected by the stirrings of new life and new hopes in the states by the progress already achieved and by the possibilities of the future To that future we can merely open a vista Our terms of reference do not invite us to survey the distant hill and the valleys that lead to them But we are confident that the Princes who in war and peace have already rendered such signal service will play a worthy and illustrious part in the development of India and the Empire

HARCOURT BUTLER

SIDNEY PEEL

W S HOLDSWORTH

APPENDIX I

(SEE PARAGRAPH 3)

Questionnaire issued by the Indian States Committee

1 The terms of reference are—

(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from —

(a) treaties, engagements and sanads, and

(b) usage sufferance and other causes

(2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment

Introductory Remarks.

2 The Committee do not consider that the substance of part (1) of the terms of reference can be suitably dealt with by a questionnaire Moreover, it is understood that the Standing Committee of the Chamber of Princes and a large number of the Princes and Chiefs present in Delhi for the meeting of the Chamber of Princes have obtained legal assistance on the general questions raised in regard to it and that the Committee will have the benefit of such assistance Should any State wish to place its own views on record it is hoped that it will do so

3 It should be stated that the Committee are not empowered to deal with past decisions of the Paramount Power or present differences between them and the States except in so far as they illustrate, or bear upon, the relationship existing between the Paramount Power and the States The Committee do not however desire to limit the evidence which the States may wish to bring forward in arguing their cases by referring to past decisions or present differences of opinion within the limits of the first part of the instructions, which refer only to the existing relationship, and in so far as they may consider it necessary to do so

4 The questionnaire therefore deals with the second part of the instructions only As the Indian States have not yet placed before the Committee the questions which they wish to bring forward, this questionnaire is based upon the records of the Political Department in so far as they relate to matters that have recently come under notice or discussion Other questions than those covered by the questionnaire may therefore be raised by the States. The Committee are anxious that every opportunity should be given to the States to place their views before them in so far as they are covered by the terms of reference

Questions

Customs

5 (a) Do the States claim a share of the Imperial customs revenue and, if so on what grounds?

(b) Has the recent raising of customs duties adversely affected the States or their subjects? If so, please quote facts and figures

(c) Would the States be prepared to abolish their own import and export duties on condition of receiving a share to be agreed upon, of Imperial customs revenue?

(d) On what grounds do the Princes who are Members of the Chamber in their own right other than those already enjoying

exemption, claim exemption from the payment of customs duties on articles imported for the personal use of themselves or their families?

Railway Jurisdiction

6 Have the States anything to add to the summary regarding jurisdiction over lands occupied by railways in their territories, as amended by the Standing Committee of the Chamber of Princes on the 20th of August, 1924? (See Annexure A)

Mints and Currency

7 Are there any considerations relative to this question which the States would like to bring before the Committee?

Dealings between Indian States and Capitalists and Financial Agents

8 Have the States anything to add to the summary approved by the Chamber of Princes in November, 1924, in regard to this question?

Manufacture and Export of Salt by the Darbars

9 This subject is dealt with by treaties and agreements between the States and the Government of India Have the States any representations to make in regard to it?

Posts and Telegraphs

10 Have the States any objection to the working of the existing system of telegraph and postal services within their territories, and what claims do they make to the profits, if any, accruing from these services and in the event of losses would the States be prepared to share the losses?

Discussion of matters of joint interest to British India and the States

11 What procedure would the States desire for the joint discussion of questions in which the interests of the States and the interests of British India may not be identical Recently special Sub Committees of Dewans have been appointed by the Standing Committee of the Chamber of Princes to confer with officers of the Government of India Has this procedure been found to be satisfactory? If not, what procedure is suggested?

General financial relations.

12 Have the States any suggestions to make with regard to the general financial arrangements existing between them and British India?

Opium

13 Do the States desire to bring forward any questions in connection with opium?

Excise.

14 Do the States desire to bring forward any questions in connection with Excise?

General

15 Do the States desire to bring forward any other questions, *vide* paragraph 4 above?

ANNEXURE A

Summary as amended by the Standing Committee of the Chamber of Princes on the 20th August, 1924

1 In 1891 the principle was laid down that, as soon as a Darbar railway became part of a line of communication between State territory, on the one hand, and British or State territory, on the other, a cession of jurisdiction should be required Subsequent developments have however, considerably modified the view then taken It was, for instance, decided in 1893 that the orders should not be so interpreted as to require cession of jurisdiction over a line lying wholly within State limits but connected at one end with the British Railway system Again in 1898 a Darbar was permitted to retain jurisdiction over a portion of State Railway in spite of the fact that a portion of the line traversed another State Three years later the orders were relaxed in another case, in which a Darbar was permitted to retain jurisdiction, although the railway penetrated into British territory In 1902 a further step in the same direction was taken a Darbar being permitted to retain jurisdiction-

over a proposed railway [illegible] part of a line connected at both ends with the [illegible] system. The principle of the original orders has now been [illegible] in several cases where lines pass through more than one State [illegible] to retain jurisdiction over the portions of the line within their respective limits.

2 In the case of railway lines over which full civil and criminal jurisdiction has been ceded the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice together with the Railway Post Office and Telegraph Acts. There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British district en bloc but all such laws are not enforced in those lands and fiscal laws particularly are not enforced as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes. An Act such as the Excise Act is however applied to such lands when it is required to control the consumption of and traffic in liquor on railway stations, or to protect the excise revenue of British India. A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways as much in the interests of the States themselves as of Government. Such a measure though fiscal, is not revenue producing and the Government of India make no profit out of it.

3 The following are the conditions on which the Government of India are prepared to consent to the permanent retention of jurisdiction by States over the railways in their territories other than those which form parts of an important through route operated by the Government of India or by a Company in the profits of which the Government of India shares —

(i) that the State or a Company or individual or association of individuals authorised by the State is either the owner of the Railway or at least has a substantial interest in it and works it,

(ii) that the State possesses proper machinery for the administration of justice,

(iii) that adequate control over the working and maintenance of the line is retained either by the application of an enactment and rules *similar to* the Indian Railways Act and the rules made thereunder, or otherwise,

(iv) that the state will grant permission for such inspections of the line by Government Railway officials as may be considered necessary.

4 In case of grave public emergency or in the strategic and military interests of the Empire it is necessary to have unity of control, and the Imperial Government feel confident that they may rely on the Indian States to co-operate with them as may be necessary on such occasions.

5 In the case of serious failure to comply with conditions (ii), (iii) and (iv) in paragraph 3 above the British Government may take such steps as are necessary to effect a remedy provided that where in pursuance of this clause, it becomes ultimately necessary to take over jurisdiction such jurisdiction shall be restored to the State concerned on its giving adequate assurances to the Government of India for the proper observance of the conditions in future.

APPENDIX II

(SEE PARAGRAPH 24)

Letter from the Viceroy and Governor General of India to His Exalted Highness the Nizam of Hyderabad, dated Delhi, the 27th March, 1926

YOUR EXALTED HIGHNESS,

Your Exalted Highness's letter of 20th September, 1925, which has already been acknowledged, raises questions of importance, and I have therefore taken time to consider my reply

I do not propose to follow Your Exalted Highness into a discussion of the historical details of the case As I informed you in my previous letter, your representations have been carefully examined, and there is nothing in what you now say which appears to affect the conclusions arrived at by me and my Government and by the Secretary of State Your Exalted Highness's reply is not in all respects a correct presentation of the position as stated in my letter of 11th March last, but I am glad to observe that in your latest communication you disclaim any intention of casting imputations on my distinguished predecessor, the late Marquis Curzon

I shall devote the remainder of this letter to the claim made by Your Exalted Highness in the second and third paragraphs of your letter and to your request for the appointment of a commission

2 In the paragraphs which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India in respect of the internal affairs of British India Lest I should be thought to overstate your claims, I quote Your Exalted Highness's own words 'Save and except matters relating to foreign powers and policies, the Nizams of Hyderabad have been independent in the internal affairs of their State just as much as the British Government in British India With the reservation mentioned by me the two parties have on all occasions acted with complete freedom and independence in all inter Governmental questions that naturally arise from time to time between neighbours Now, the Berar question is not and cannot be covered by that reservation No foreign power or policy is concerned or involved in its examination, and thus the subject comes to be a controversy between the two Governments that stand on the same plane without any limitations of subordination of one to the other"

3 These words would seem to indicate a misconception of Your Exalted Highness's relations to the Paramount Power, which it is incumbent on me as His Imperial Majesty's representative to remove since my silence on such a subject now might hereafter be interpreted as acquiescence in the propositions which you have enunciated

4 The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies it is the right and

duty of the British Government while scrupulously respecting all treaties and engagements with the Indian States to preserve peace and good order throughout India. The consequences that follow are so well known and so clearly apply no less to Your Exalted Highness than to other Rulers that it seems hardly necessary to point them out. But if illustrations are necessary I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a Sanad declaratory of the British Government's desire for the perpetuation of his House and Government subject to continued loyalty to the Crown that no succession in the Masnad of Hyderabad is valid unless it is recognised by His Majesty the King Emperor and that the British Government is the only arbiter in cases of disputed succession.

5 The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal no less than the external security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government and where Imperial interests are concerned or the general welfare of the people of a State is seriously and grievously affected by the action of its Government it is with the Paramount Power that the ultimate responsibility of taking remedial action if necessary must lie. The varying degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that except in matters relating to foreign powers and policies, the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title Faithful Ally which Your Exalted Highness enjoys has not the effect of putting Your Government in a category separate from that of other States under the paramountcy of the British Crown.

6 In pursuance of your present conception of the relations between Hyderabad and the paramount power you further urged that I have misdescribed the conclusion at which His Majesty's Government have arrived as a 'decision' and that the doctrine of *res judicata* has been misapplied to matters in controversy between Hyderabad and the Government of India.

7 I regret that I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between States or between one of the States and itself and even though a Court of Arbitration may be appointed in certain cases its function is merely to offer independent advice to the Government of India, with whom the decision rests. I need not remind you that this position has been accepted by the general body of Indian Rulers as a result of their deliberations on paragraph 308 of the Montagu Chelmsford Report. As regards the use of the term *res judicata* I am of course aware that the Government of India is not like a Civil Court precluded from taking cognizance of a matter which has already formed the subject of a decision but the legal principle of *res judicata* is based on sound practical considerations and it is obviously undesirable that a matter which has once been decided should form the subject of repeated controversies between the same parties.

8 I now pass on to consider your request for the appointment of a Commission to enquire into the Berar case and submit a report As Your Exalted Highness is aware, the Government of India not long ago made definite provision for the appointment of a Court of Arbitration in cases where a State is dissatisfied with a ruling given by the Government of India If, however, you will refer to the document embodying the new arrangement, you will find that there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government, and I cannot conceive that a case like the present one where a long controversy has been terminated by an agreement executed after full consideration and couched in terms which are free from ambiguity, would be a suitable one for submission to arbitration

9 In accordance with Your Exalted Highness's request, your present letter has been submitted to His Majesty's Secretary of State and this letter of mine in reply carries with it his authority as well as that of the Government of India.

Yours sincerely,

(Sd) Reading

APPENDIX III

(SEE PARAGRAPH 38)

Joint opinion of the Right Hon Sir Leslie F Scott, K C, M P, Mr Stuart Bevan K C, M P, Mr Wilfrid A Greene, K C, Mr Valentine Holmes, and Mr Donald Somervell

COUNSEL ARE REQUESTED TO ADVISE on the legal and constitutional aspects of the questions raised by the terms of reference to the Indian States Committee

Opinion

The terms of reference to the Indian States Committee are as follows —

(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from —

(a) treaties engagements and sanads and

(b) usage sufferance and other causes

(2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment

It will be observed that the phrase Paramount Power is used in part (1) but as that phrase refers not to crown *simpliciter* but to the Crown in possession of certain attributes we think it will be clearer if we discuss the relationship of the states with the Crown and express our opinion separately as to the meaning of paramountcy in India

It may be convenient to state our main conclusions first and then give the reasoning on which they are based

Main conclusions

(1) In the analysis of the relationship between the states and the Crown legal principles must be enunciated and applied

(2) The Indian States to-day possess all original sovereign powers except in so far as any have been transferred to the Crown

(3) Such transfer has been effected by the consent of the states concerned and in no other way

(4) The consent of a state to transfer sovereign rights to the Crown is individual to that state and the actual agreement made by the state must be investigated to see what rights and obligations have been created

(5) Such agreement appears normally in a treaty or other formal engagement An agreement to transfer sovereign powers is however capable in law of being made informally In such case the onus is on the transferee viz the Crown to prove the agreement

(6) The relationship of the Crown as Paramount Power and the states is one involving mutual rights and obligations It rests upon agreement express or implied with each state and is the same with

regard to all the states Paramountcy gives to the Crown definite rights, and imposes upon it definite duties in respect of certain matters and certain matters only, *viz*, those relating to foreign affairs and external and internal security (a phrase which we employ for brevity and define more fully in paragraph 6 *infra*) It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights and the performance of such duties Wherever 'paramountcy' is mentioned in this opinion we mean paramountcy in the above sense and no other

(") The relationship is between the states on the one hand and the British Crown on the other The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control

Legal principles are to be applied

1 The relationship between the Crown and the various Indian States is one of mutual rights and obligations and we have no hesitation in expressing the opinion that it must be ascertained by legal criteria When using the word legal we are not thinking of law in the limited sense in which it is confined to law laid down by an authority which has power to compel its observance but are dealing with well recognised legal principles which are applied in ascertaining mutual rights and obligations where no municipal law is applicable That the absence of judicial machinery to enforce rights and obligations does not prevent them from being ascertained by the application of legal principles is well illustrated by reference to international relations Their legal principles are applied in arbitrations between independent states and by the Permanent Court of International Justice whose statute provides that the court shall apply principles of law recognised by all civilised nations

The Indian States were originally independent each possessed of full sovereignty, and their relationship *inter se* and to the British power in India was one which an international lawyer would regard as governed by the rules of international law As the states came into contact with the British they made various treaties with the Crown So long as they remained independent of the British power, international law continued to apply to the relationship And even when they came to transfer to the Crown those sovereign rights which in the hands of the Crown, constitute paramountcy, international law still applied to the act of transfer But from that moment onwards the relationship between the states and the Crown as Paramount Power ceased to be one of which international law takes cognizance

As soon as a treaty was made between the Crown and a state, the mutual rights and obligations flowing therefrom, and the general nature of the relationship so established could only be ascertained by reference to legal principles This result has not in our opinion been in any way affected either by lapse of time, or by change of circumstances Although the treaty, in any individual case, may have been modified or extended by subsequent agreement express or implied there is no ground for any suggestion that the relationship has passed from the realm of law The effect of the treaty itself and the extent if any to which it has been modified or extended fall to be determined by legal considerations

The view implicit in the preceding observations seems to accord with the terms of reference to the Indian States Committee in which the Secretary of State has directed enquiry We see no ground for

applying to the relationship any other than legal criteria, and we are of opinion that the relationship is legal, importing definite rights and obligations on both sides

Sovereignty rests in the states except so far as transferred to the Crown

2 As each state was originally independent, so each remains independent, except to the extent to which any part of the ruler's sovereignty has been transferred to the Crown To the extent of such transfer the sovereignty of the state becomes vested in the Crown, whilst all sovereign rights, privileges and dignities not so transferred remain vested in the ruler of the state In the result the complete sovereignty of the state is divided between the state and the Crown The phrase residuary jurisdiction" is sometimes used in official language In our opinion it is the state and not the Crown which has all residuary jurisdiction

That the sovereignty of the states still exists has been recognised by leading writers on the subject as well as by the pronouncements of the Crown itself

Thus Lee Warner bases his definition of a state on its possession of internal sovereignty (page 31) Similar views are expressed by others

That this view is accepted by the Crown can be confirmed by reference to many official documents As examples we may quote sanads issued after the mutiny which refer to the Governments of the several Princes and Chiefs who now govern their own territories" or the proclamation of the 19th April 1875 dealing with Baroda in which the Gaekwar Mulhar Rao is deposed from the sovereignty of Baroda and the sovereignty of the state is conferred on his successor or reference in the Montagu Chelmsford report to the "independence of the states in matters of internal administration" and to their internal autonomy

The Crown has no sovereignty over any state by virtue of the Prerogative or any source other than cession from the ruler of the state The idea which is held or seems to be held in some quarters that the Crown possesses sovereign rights not so transferred to it by the state is erroneous

Consent the sole method by which sovereign powers have been transferred from existing states to the Crown.

3—(a) Sovereignty is, as between wholly independent states, susceptible of transfer from one holder to another by compulsory annexation or voluntary cession

Where a conqueror after victory in war annexes the conquered state, the loss of sovereignty by the defeated state, and the assumption of sovereignty by the conqueror over the territory so transferred is recognised as valid by international law The essence of the event is that the conqueror takes, without any act of the vanquished state It is a mere exercise of power by the conqueror

Annexation may also be enforced without fighting Where a stronger state proclaims its intention to annex the territory and sovereign powers of a weaker state and in fact does so then, in international law, the transfer is as effective as if there had been a conquest.

Cession of sovereignty takes place, when one state cedes territory or sovereign rights to another state In cession it is not the act of the transferee, but the consent of the transferor, which affects the transfer But wherever the transfer is the direct result of an exercise of power, it is in the essence a case of annexation, in whatever form the transfer may be expressed—as for instance where the transfer takes the form of a cession, which a defeated state is compelled to execute Indeed whenever the transferor state acts under the compulsion of the stronger transferee state, the transfer made by the transferor is not really the free act of that state, but a mere taking by the transferee state—an annexation in reality though not in form A real cession, *i e*, a transfer which is really the act of the transferor necessarily depends upon the free consent of the transferor, and is essentially a product of voluntary agreement

3 —(*b*) In this section of our Opinion we have up to now been dealing with transfer of territory, or sovereign rights as between independent states, whose relations are subject to the rules of ordinary international law But our conclusion, that in that field consent is essential to every transfer, which is not in essence a forcible taking by the more powerful state, is even more true of a transfer to the Crown by an Indian State at any time after it had come into permanent contractual relationship with the Crown by agreeing to the paramountcy of the Crown in return for its protection For, where the relationship is thus created by an agreement which, by its express or implied terms defines the permanent division between the Paramount Power and the Indian ruler, of the sovereignty over the state's territory any further act of acquisition of sovereign rights, by force or pressure, is excluded by the contract itself In order to acquire any further sovereign rights the Paramount Power must ask for, and obtain the agreement of the protected state To take them by force or pressure would be a direct breach of the contract already made

This position is frankly acknowledged by the Crown We quote in the appendix some of the chief historical pronouncements which have been made upon the British attitude towards the Indian States

The possibility in law of the Paramount Power repudiating its legal relationship with its dependent state, and using force or pressure to acquire powers over it, in breach of the contractual terms, need not be considered The pronouncements which we have cited put any conscious attempt of the kind wholly out of the question, and the exercise in fact of force or pressure whether intended or not, would be a breach of the contract It follows that the relationship of each state to the Crown is, and has been since the time of the first treaty between the two, purely contractual

In this context it is to be noted, that, from those states which have never ceased to exist as states the Crown has never claimed any rights as flowing from conquest or annexation Where the Crown has intended to annex its action has been unequivocal

Many Indian States have in the past been conquered and annexed They were then merged in British India, and ceased to exist Some were annexed by an exercise of superior power without the use of force

In a few cases states have been annexed and wholly merged in British India and then recreated by the prerogative act of the Crown In such cases the Crown is free to grant what powers of sovereignty it chooses, and the sovereignty of the ruler to whom

rendition is made, is limited and defined by the conditions of the grant.

But when once a state has been in fact recreated, and a contractual relationship established between it and the Crown, it becomes thenceforth subject to the same considerations as other states in contractual relationship with the Crown, and mutual rights and obligations are determined by the contract, and by that alone

Other suggested methods of transfer

3-(c) At this point it is convenient to consider the methods alternative to that of consent, which have been suggested by leading jurists and others, for effecting a transfer from a state to the Crown of sovereign rights

Sir William Lee Warner suggests five channels as contributing to the rights or duties of the Indian Princes (i) the Royal Prerogative, (ii) Acts or Resolutions of Parliament, (iii) the law of nature (iv) direct agreement between the parties, and (v) usage With regard to the first two suggested channels or—to use a word which seems to us to be more appropriate—*sources* of rights and duties, we are quite unable to find any legal principle on which it is possible to base a contention that either (i) the Royal Prerogative or (ii) Acts or Resolutions of the British Parliament can give to the Crown any rights against the states or impose any obligations upon them

(i) In the case of the Royal Prerogative, Sir William Lee Warner does not himself explain how it can be effective to bind the Indian States and we are forced to the conclusion that he was driven to suggest the Royal Prerogative, as a source of rights and duties which he believed to exist, because he could think of no other

(ii) With regard to Acts of Parliament, Sir Wiliam Lee Warner does not appear to assert that they have the direct effect of creating obligations in the Indian Princes In so far as he suggests that the statutes of the British Parliament, which control British subjects, may have an indirect reaction, in fact, on Indian States, with whom British subjects have dealings or that Acts of Parliament may influence Indian rulers in a particular direction, we agree with him, but this is a very different thing from his proposition that Acts of Parliament are one of "the five channels," from which flow the duties and obligations of the Indian States

(iii) His third suggested source, namely, the law of nature, he puts forward as the source of an obligation to refrain from inhuman practices, such as suttee, infanticide or slavery Whether there be an *obligation of the kind, we express no* opinion, but if there be, it is a duty due to the civilised world, and we can see no ground for treating it as any special obligation owed to the Crown as such Indeed the history of the dealings of the Crown with the states, with regard to practices of this kind apparently shows a recognition by the Crown, that their suppression can only be secured by negotiation and agreement, and not by virtue of any right of interference

(iv) With regard to the fourth source of obligation suggested by Sir William Lee Warner, namely, direct agreement between the parties, we agree with him as above stated

(v) Sir William does not define what he means by usage, his fifth source; if he meant an acquiescence in a practice in such circumstances that an agreement to that practice is to be inferred, we

should agree with him, because his fifth source would merely be a particular form of agreement. But Sir William seems to regard usage as a source of obligation even though agreement be absent, and with this view we disagree We discuss the topic later in our Opinion

It is to be observed that Sir William Lee Warner is definitely of the view that the Indian States are sovereign states, and it is only in regard to the view which he takes as to the extent to which and the way in which their sovereignty has been limited that we part company with him

Hall deals with the question of the limitation on the sovereignty of the states in a footnote (Hall s International Law 8th Ed p 28) He suggests an explanation different from any put forward by Sir William Lee Warner for the limitation which he believes to exist over and above the limitation imposed by treaty He says that, in matters not provided for by treaty a residuary jurisdiction is considered to exist and the treaties themselves are subject to the reservation that they may be disregarded when the supreme interests of the Empire are involved or even when the interests of the subjects of the Native Princes are gravely affected The treaties really amount to little more than statements of limitation which the Imperial Government except in very exceptional circumstances, places on its own action In dealing with this suggestion of a residuary jurisdiction we experience the same difficulty that we felt in dealing with Sir William Lee Warner s suggestion of the Royal Prerogative and Acts of Parliament as sources of obligation on the states towards the Crown namely that we can conceive no legal justification for inferring the existence of such a residuary jurisdiction Moreover Hall does not indicate what reasoning led him to draw the inference But we are clearly of opinion that Hall s view, as expressed in his footnote is wrong The statement that the treaties are merely unilateral acts of the Crown setting a self imposed limit on its inherent powers over the states, cannot in our opinion be supported The assumption that there are any such inherent powers is devoid of any legal foundation—indeed his assertions in the footnote go beyond anything which the Crown has ever claimed and are quite inconsistent with the various formal pronouncements of the Crown cited in the appendix to this Opinion Those pronouncements leave no room for doubt that the Crown regards its treaties and agreements with the Indian States as binding upon it in as full a manner as any of its treaties with other sovereign states

3—(*l*) Before we pass from this subject there is one other matter with which we ought to deal Three of the writers of this Opinion *have in an earlier Opinion expressed the view that paramountcy is* a factor limiting the sovereignty of the States At first sight this view may seem to be incompatible with the opinion which we have expressed above that agreement is the sole source of limitation upon the sovereignty of the states and that obligations of the states towards the Crown are created by agreement and by nothing else But in truth there is no such incompatibility The Crown is aptly described as the Paramount Power because the states have *agreed* to cede to it certain important attributes of their sovereignty and paramountcy is a useful word to describe the rights and obligations of the Crown, which arise out of the agreed cession of those attributes of sovereignty So understood paramountcy can properly be said to be a "factor limiting the sovereignty of the states" But inasmuch as

this is only to say that the agreement of the states to cede attributes of sovereignty is a factor limiting their sovereignty we think that to introduce the word paramountcy (as we did in our earlier Opinion) in this connection was confusing and apt to mislead It is to be observed that Sir William Lee Warner avoids the use of it and does not include paramountcy in the list of "channels" through which in his view rights and obligations are created He uses paramountcy only to describe the relationship itself and this use is correct

In our considered view there is a real danger in a loose use of the word In its correct sense paramountcy is not a factor in creating any rights or obligations but is merely a name for a certain set of rights when vested by consent in another sovereign state In correctly understood it may be treated as creating rights and obligations, and as the word paramountcy itself is not a word of art with a defined meaning the rights and obligations attributed to it would be undefined If paramountcy were a source of rights there would be no limit save the discretion of the Paramount Power, to the interference with the sovereignty of the protected states by the Paramount Power Indication of this misunderstanding of paramountcy are we are informed present in the official correspondence with individual states and this fact gives the point importance. We regard the idea that paramountcy as such creates any powers at all as wholly wrong and the resort to paramountcy as an unlimited reservoir of discretionary authority over the Indian States, is based upon a radical misconception of what paramountcy means

The existence of a general discretionary authority is moreover, wholly inconsistent with the pronouncements of the Crown to which we have already referred

3 —(e) We have given at some length our reasons for our opinion that the sovereignty of the states is limited by agreement and by nothing else because we think that this is the most important of the questions which we have to consider

States to be considered separately

4 The consent to the transfer to the Crown of any sovereign powers is the consent of each individual state given by its sovereign Each state and each occasion of transfer must be considered separately in order to find out what the agreement was by which the consent of the state was given to any particular session

This legal conclusion not only is of general importance for the purpose of correcting a too common misconception that the problem of the states can be disposed of by general propositions applicable to all alike but introduces a practical difficulty in the writing of this Opinion There are many individual differences in regard to the terms of the consensual relationships of the several states to the Crown and the relationship may be constituted by one or by several agreements In this Opinion we must content ourselves with a statement only of reasons and conclusions of general application

We have noted a common view which seems to us fallacious It is that the possession by the Crown of certain rights of sovereignty over State A of itself justifies a legal conclusion that the Crown has a similar right over a neighbouring State B If we are right in the view which we hold (and we hold it confidently) that the relation between the Crown and A and between the Crown and B, is in

each case regulated by a separate contract or set of contracts it follows necessarily that the view so expressed is a fallacy But this crude form of the fallacy is less common than the view that because the Crown enjoys a certain right in regard to many states, a legal conclusion necessarily follows that it possesses the right generally in regard to all states This argument is equally fallacious because in our view the relationship is one of contract

It should however, be borne in mind that, if the Crown has a certain right clearly established and publicly recognised in regard to a group of states their example may not improbably influence a neighbouring state to follow suit, and enter into its own individual contract with the Crown ceding the same kind of rights And the more general and notorious the Crown s possession of the right in question is the less improbable it will be, that our hypothetical state should consent to be on the same footing without insisting on the execution of a formal instrument Where this happens the Crown, in the result possesses a right in regard to that state, similar to that which it already possesses in regard to the others, but the reason is that that state has by conduct made its own tacit agreement with the Crown conferring the same powers it is not because any such sovereign rights extending all over India are inherent in the Crown

In this connection a further reference is necessary to the question of paramountcy which gives point to the views which we have expressed above The Crown is in relation to all the states the Paramount Power Its position as such is universally recognised and cannot be disputed From this relationship which as we have already pointed out is itself based on agreement express or implied certain mutual rights and duties arise What those rights and duties are we discuss later in this Opinion (paragraph 6 *infra*) It is sufficient to state here that they relate to foreign affairs and the external and internal security of the states Paramountcy bears the same meaning in relation to all the states although the precise manner in which it is put into operation in any given circumstances may differ In this sense and in this sense only can it be said that the position of all the states *vis à vis* the Crown is the same But it is the same not because the Crown has any inherent residuary rights but because all the states have by agreement ceded paramount rights to the Crown

Agreement transferring sovereign rights normally expressed in treaty though capable of being made informally but onus of proof then on transferee, i e the Crown

5 —(*a*) When one state makes an agreement with another state affecting its sovereignty and thereby does an act of great public importance it is usual to put the agreement into solemn form in order to have an unimpeachable record and to ensure that the signatories are properly accredited to bind their respective states

5 —(*b*) It is no doubt true that both in international law, as between independent states and in the law applicable to the relations of the Crown and Indian States it is possible that an agreement effecting a cession of sovereign rights should be made informally by a mere written agreement or correspondence and even that it should be made by word of mouth at an interview But if so important a transaction as a cession of sovereign rights is alleged to have been carried out informally the language used and the surrounding circumstances must be scrutinised with care, to see,

firstly, whether the transaction is really an agreement to transfer sovereign rights, or something less important, and secondly, whether the authority of the signatory to bind his state is beyond doubt That such a transaction should be carried out by a mere oral interview is so unlikely as in itself to raise doubts as to the value of the evidence

Sanads.

5—(c) Its terms of reference request the Indian States Committee to report upon, *inter alia*, the effect of sanads upon the relationship of the states to the Paramount Power The word sanad" (in older documents often spelt sunnad" as it is pronounced) is, as we are informed, in common use in India, not only for diplomatic instruments of grant, but in ordinary commercial documents, and receipts for money, and means merely evidence' or record'

But whatever be the correct signification of the word, we realise that in political parlance it is used generally as indicating a grant, or recognition from the Crown to the ruler of a state

But a sanad by way of grant can have no operative effect, as a grant, if the grantee already has the powers which the sanad purports to grant It could only have that effect, if the grantee state had, at some previous date in its history, ceded to the Crown those very powers which, or some of which, the sanad purports to grant, or if it were a case of a re creation out of British India of a lapsed state, or a cession to an existing ruler, of territory which at the date of the sanad was a part of British India

Similar considerations apply to a sanad by way of recognition If the state does not possess the right, the recognition would be construed as a grant but if it does possess the right, then the sanad is a mere acknowledgment or admission by the Crown

It follows also from the reasoning of this Opinion that the machinery of a sanad cannot be used so as to curtail the powers of a ruler *Ex hypothesi* each particular state possesses, at any given moment, a measure of sovereignty which is definite It will in every case be less than complete sovereignty, because the state must have given up those rights which constitute paramountcy and it may also, by [illegible] Crown, have given up other sovereign [illegible] t after deducting all these cessions [illegible] ignty, it is plain that the state stil [illegible] "x" may be, no part of "x" can [illegible] its will—and the Crown cannot do indirectly by a sanad which purports to define the rights of the state, what it cannot do directly If the sanad defines the state's rights as wider than "x", then to the extent of such excess it may be construed as a grant by the Crown But if the definition is narrower than "x" then to the extent of the restriction the sanad will be inoperative The effect of the ordinary sanad may perhaps be expressed shortly by saying that, leaving aside the exceptional cases where the Crown is making a new cession of sovereign rights, it is nothing more than an act of comity, expressing a formal recognition by the Crown of powers of sovereignty which a State in fact possesses

We need only add that where a sanad is issued by the Crown in circumstances showing that it represents an agreement with the state concerned, then it is in fact the record of the agreement, and will have the operative effect of an agreement

Usage, sufferance and other causes

5—(*d*) (i) *Usage*—The subject of "usage" looms large in discussions of the rights of the Crown over the states, because it is supposed by many to be in itself a source of sovereign rights This idea is erroneous

"Usage" is an ambiguous word It has one sense or one set of attributes in international law, and another in municipal law In the former, "usage" means the practice commonly followed by independent nations, and has the binding character of a rule of law, because it represents the consensus of opinion amongst free and independent nations

But the characteristic relationship between nations, which in international law gives to usage its legal efficacy, is absent from India The Indian States are not in the international sense independent, but protected by the British Crown, they are not free *inter se* to follow what practices of interstatal relations may seem good to them, and thereby to form and exhibit a consensus of opinion on any particular usage, for they have, by the very terms of their basic agreement with the Crown, given up the rights of diplomatic negotiation with and of war against or pressure upon other Indian States, and have entrusted to the Crown the regulation of their external relations, in return for the Crown's guarantee that it will maintain in their integrity their constitutional rights, privileges and dignities, their territory and their throne No consensus of opinion as amongst free and independent nations can therefore even begin to take shape, and without it the source of obligation in the international relationship cannot arise

In municipal law usage is of itself sterile, it creates neither rights nor obligations. It is true that a course of dealing between two parties may be evidence of an agreement to vary some existing contract, *sc* if it represents a tacit but real agreement between them, that notwithstanding the express terms of that contract they will be bound by the practice which they have been used to follow In such a case the usage becomes embodied in a fresh, though tacit and unwritten agreement, but it is not the usage itself, it is the agreement underlying it, which gives rise to the new rights

And we should add that the inference that a new agreement has thus been made cannot be lightly drawn There is a vital distinction between acquiescence by A in acts which involve a departure by B from the existing contract between them, and an agreement by both to a variation of the contract, so that B shall in future have the right to do those acts, whether A acquiesces or not We use the word "variation" designedly, because the sovereignty of the states remains in them, save in so far as it has been ceded by treaty or other agreement, and any further diminution of the sovereign rights of the state must constitute a variation of the existing contract so contained in the treaty or other agreement.

We recognise that there are in other fields of human affairs occasions when usage as such may acquire the binding force of law, but they are, in our opinion, irrelevant to the matters under consideration For instance, we disregard the case of usage as a historical origin of rules of the common law of a country, because the history of British relations with the states leaves no room for the birth and growth of a common law For analogous reasons we see no relevance in usages such as have led to the growth of the cabinet system in the unwritten constitution of Great Britain, or have set parliamentary limitations upon the Royal Prerogative

In fine we see no ground upon which there can be imputed to usage between an Indian State and the Crown any different efficacy from that which may be attributed to it by municipal law between individuals It follows therefore that mere usage cannot vary the treaties or agreements between the states and the Crown, because of itself it does not create any new right or impose any new obligation Acquiescence in a particular act or a particular series of acts *primâ facie* does nothing more than authorize the doing of those particular acts on the particular occasions when acquiescence was so given It is legally possible that behind the usage there should in fact be an agreement dealing with rights but it is important to realize the limitations within which it is permissible to infer such an agreement are that no agreement can underlie usage, unless both the contracting parties intend to make one

And where an agreement is not made plain by incorporation in a written instrument which can be read and understood, it is important to avoid confusion of thought as to the subject matter A licence to the Government of India to do a particular act on one or more occasions which without leave would be an encroachment upon the state s sovereignty, is not an agreement to cede sovereign powers And no inference of an agreement to cede sovereignty can be drawn from one or from many such licences The very fact that a licence is sought shows a recognition by the Crown that it does not possess the sovereign power to do the act without the consent of the ruler concerned And it is obvious that a licence of the kind is much more likely to be given informally than a cession of sovereignty It follows therefore that unless the circumstances viewed as a whole compel the inference that the parties were intending to make an agreement changing their sovereign relationship, the usage cannot alter their rights And on this question of fact it should be borne in mind that the Crown and the states have acted in a way which shows that this view has really been taken by both In the case of many states there exists a whole series of treaties and engagements, regulating many aspects of their relationship by express provision Where express contractual regulation thus extends in many directions over the field of political contact, there remains little room for implying tacit agreement

Similarly where it is sought upon evidence of conduct to found an allegation of usage' and from that usage to imply an agreement, if the facts disclose protests by the state or any other evidence negativing an intention to make such an agreement, the very basis of the claim is destroyed It is perhaps pertinent to observe that where a political practice is said to amount to a usage followed as between the Crown and a state or states, and that practice began with some act of the Government of India during a minority or other interregnum when the state was under British administration, there is an additional obstacle to the inference from the usage of any intention by the state to make any agreement affecting its sovereignty

It follows from the whole reasoning of this Opinion that the only kind of usage" in connection with the Indian States which can even indirectly be a source of sovereign powers is not a usage common to many states as is the case in international law, but a course of dealing between a particular state and the Crown of a kind which justifies an inference of an agreement by that state to the Crown having some new sovereign power over the state We may also add that a 'political practice" as such has no binding force,

still less have individual precedents or rulings of the Government of India

When we speak of the possibility of inferring an agreement from usage, we desire to point out that such an agreement can only be inferred as against the particular state which was party to the usage, and cannot extend to bind any other state This caution should be observed even where some other state has been following the identical usage In the case of State A evidence of facts beyond the usage itself may conceivably justify the inference of agreement, in the case of State B, such additional evidence may be absent

(ii) *Sufferance*—The word 'sufferance' means "acquiescence", and may either amount to a consent to particular acts, or particular things, or be of such a character, and given in such circumstances as to justify the inference of an agreement From the legal point of view its efficacy is no greater, and no less, than that of usage, and it is in principle covered by what we have said about usage If there be any difference, it is rather that the word seems to exclude the idea of two-sided agreement.

5—(e) The ordinary rule that the burden of proof is upon the person who is propounding the existence of an agreement applies, in our view, in the case of the states and the Crown, with as much force as it applies to the case of individuals whose relations are governed by municipal law

Paramountcy.

6—(a) We have already [paragraph 3 (*d*), *supra*] discussed certain aspects of paramountcy and have expressed the opinion that the relationship is founded upon agreement, express or implied, existing in the case of all the states, and that the mutual rights and duties, to which it gives rise, are the same in the case of all the states In order to ascertain what these mutual rights and duties are it is necessary to consider what are the matters in respect of which there has been a cession of sovereignty on the part of all the states

6—(b) The gist of the agreement constituting paramountcy is, we think, that the state transfers to the Crown the whole conduct of its foreign relations—every other state being foreign for this purpose—and the whole responsibility of defence, the consideration for this cession of sovereignty is an undertaking by the Crown to protect the state and its ruler against all enemies and dangers external and internal, and to support the ruler and his lawful successors on the throne These matters may be conveniently summarised as, and are in this Opinion called, "foreign relations and external and internal security" We can find no justification for saying that the rights of the Crown in its capacity as Paramount Power extend beyond these matters The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a state must, we think, be found in the answer to the following question "Is the act which the Crown claims to do necessary for the purpose of exercising the rights or fulfilling the obligations of the Crown in connection with foreign relations and external and internal security?' If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing, but if they did, such a tribunal when in possession of all the facts would find no insuperable difficulty in deciding the question

We do not propose in this Opinion to discuss particular cases in which a claim by the Paramount Power to interfere with the internal sovereignty of a ruler would be justified on the principle which we have enunciated There are certain cases as for example such misgovernment by the ruler as would imperil the security of his state, in which the Paramount Power would be clearly entitled to interfere Such an interference would be necessary for the purpose of exercising the Crown's rights and fulfilling its obligations towards the state But in this Opinion we are dealing rather with principles than their application and an enumeration of cases in which interference would appear to be justifiable would be out of place It would be equally out of place for us to try to particularize as to what acts of interference would be proper in cases where some amount of interference was admittedly justifiable, beyond saying that the extent manner and duration of the interference must be determined by the purpose defined in our question above

6 —(c) We have already stated and we repeat that the position of Great Britain as Paramount Power does not endow it with any general discretionary right to interfere with the internal sovereignty of the states That in certain matters the element of discretion necessarily enters is no doubt true Thus in the case of a national emergency the Crown must temporarily be left with some measure of discretion for the common protection of all But this is due to the fact that the right and duty of the Crown under the paramountcy agreement to defend the states necessarily involve such a discretionary element It is a very different thing to say that in case of a difference arising between the Crown and a state the Crown by virtue of its paramountcy has a general discretion to overrule the objections of the state Whether or not it is entitled to do so must depend not upon the discretion of the Crown, but upon the answer to the question of fact set out in the last sub paragraph

6 —(d) So far as we can judge there is no evidence of the states generally agreeing to vest in the Crown any indefinite powers or to confer upon it any unlimited discretion The existence in certain parts of the field of paramountcy of such a discretionary element as is referred to above, is no ground for presuming an intention to confer a similar discretionary authority in any other fields, such as, for example, commercial or economic matters. Indeed, the history of most states discloses numerous occasions on which the Government of India in order to get some action adopted within or affecting a state, has sought and obtained the consent of the state to a particular agreement for the purpose, thus showing a recognition by the Crown that its powers are limited and that it cannot dispense with the consent of the state

6 —(e) Our opinion that the rights and duties arising from paramountcy are uniform throughout India carries with it the resultant view that the Crown by the *mere fact of its paramountcy*, cannot have greater powers in relation to one state than it has in relation to another The circumstance that a state has, by express or implied agreement conferred upon the Crown other specific powers does not mean that the paramountcy of the Crown has in relation to that state received an extension Much less can it mean that it has by such an agreement received such an extension in relation to other states which were not parties to the agreement The rights so conferred on the Crown arise from the agreement conferring them and not from the position of the Crown as Paramount Power



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of an impartial kind for their adjustment, and for ensuring compliance with any decision so arrived at

We should add that such an implied obligation on the Crown must carry with it the corresponding implication of such obligations on each state as may be necessary to make the machinery effective

6—(i) The question also arises whether there is any obligation upon the Crown analogous to that described by us in the last sub paragraph in a case where the dispute is between a state and the Government of India. We recognise that this question is one of great practical importance to the states. We are instructed that a complaint made by a state against the Government is decided by the Government, on a mere written representation without any of the opportunities afforded by ordinary legal procedure for testing the opposite side's arguments and evidence, that the material on which the decision is based is kept secret and finally, that on many occasions of dispute, in the view of the Princes and Chiefs, the Government of India is both party and judge in its own case

We have considered this matter, but we are of opinion that, disregarding all political considerations, there is no legal obligation upon the Crown to provide machinery for independent adjudication. Each State, when ceding paramountcy, obtained from the Crown by agreement certain undertakings, express or implied, but in our view this was not one and cannot be implied. The states merely relied upon the Crown to carry out its undertakings

6—(j) Whenever for any reason the Crown is in charge of the administration of a state or in control of any interests or property of a state its position is, we think in a true sense a fiduciary one. That a trustee must not make a profit out of his trust, that a guardian in his dealings with his ward must act disinterestedly, are legal commonplaces and afford a reliable analogy to the relationship between the Paramount Power and the states. Upon this view the Crown would not be justified in claiming the right as Paramount Power, for example to override the rights of a state in the interest of British India. Such a claim would, in our view, be indefensible on the ground last mentioned, and also because it would involve the extension of the conception of paramountcy beyond the limits which we have denied above

The nature of the relationship

7 The terms of reference to the Indian States Committee raise another question to the legal aspect of which we have given careful consideration, namely, the nature of the relationship between the Paramount Power and the states having regard particularly to the parties between whom the mutual rights and obligations subsist and the character of those rights and obligations. Our views may be summarised as follows:—

(i) The mutual rights and obligations created by treaty and agreement are between the states and the British Crown. The Paramount Power is the British Crown and no one else, and it is to it that the states have entrusted their foreign relations and external and internal security. It was no accidental or loose use of language, when on the threshold of dealing with the subject of the Indian States, the Montagu Chelmsford report described the relationship as a relationship to the British Crown, for the treaty

6.—(*f*) The Crown has by the mere cession to it of paramountcy, acquired no right to control the independent action of any state in matters lying outside the special field so ceded. Outside the subjects of foreign relations and the external and internal security of the state each state remains free to guide its actions by considerations of self interest and to make what bargain with the Government of India it may choose. There is no legal or constitutional power in the Government of India or its officers nor in the Viceroy or the Political Department to insist on any agreement being entered into by a state. Nor is there any legal basis for a claim that any state is under a duty to co-operate in matters outside the field of paramountcy with British India. The phrase "subordinate co-operation" which appears in some treaties (*e.g.* the Udaipur Treaty of 1818) is concerned, in our opinion, solely with military matters.

It follows from this ascertainment of the legal position that in a large field of subjects such as fiscal questions and the commercial and industrial development of India as a whole, it is within the rights of each state so far as paramountcy is concerned and apart from special agreement to remain inactive and to abstain from co-operation with British India. In many directions the legal gap may have been bridged by particular agreements between individual states and British India, but such agreements may fall short of what is or may hereafter become desirable in the common interest of the development of India as a whole or may need revision. It is therefore important to draw attention to the fundamental legal position that if on political grounds the co-operation of the states is desired their consent must be obtained. The converse proposition is equally true. Outside the matters covered by paramountcy and in the absence of special agreement, no state is entitled to demand the assistance of the Crown to enforce the co-operation of British India in the performance of those acts which the states may consider desirable from their point of view.

6.—(*g*) The rights of any given state being defined by its agreement with the Crown, it follows that the Crown has no power to curtail those rights by any unilateral act.

For the same reason it is impossible for Parliament in Great Britain by means of legislation to curtail any rights of the states. The Crown cannot break a treaty with the concurrence of the Lords and Commons any more than without their concurrence.

Similarly the Legislature of British India is equally unable to impose upon the ruler of a state any obligation which under its agreements with the state the Crown is not authorized to impose.

6.—(*h*) It is a necessary consequence of the conclusions expressed above that the relationship of paramountcy involves not merely a cession of sovereignty by each state but also the undertaking of definite obligations by the Paramount Power towards each state. This aspect of the matter will not be disputed.

The duties which lie upon the Crown to ensure the external and internal security of the states and to keep available whatever armed forces may be necessary for these purposes are plain.

Similarly the fact that the states by recognising the paramountcy of the Crown have abandoned the right to settle by force of arms disputes which may arise between them clearly imposes upon the Crown the duty either to act itself as an impartial arbiter in such disputes or to provide some reasonably just and efficient machinery

APPENDIX

Extract from Queen Victoria's Proclamation, 1858

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted and will be scrupulously observed, and We look for the like observance on their part We desire no extension of Our present Territorial Possessions and while We will admit no aggression upon Our Dominions or Our rights to be attempted with impunity We shall sanction no encroachment on those of others We shall respect the rights dignity, and honour of Native Princes as Our own, and We desire that they, as well as Our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government

Extract from King Edward VII's Coronation Message

To all My feudatories and subjects throughout India, I renew the assurance of My regard for their liberties, of respect for their dignities and rights, of interest in their advancement, and of devotion to their welfare, which are the supreme aim and object of My rule and which, under the blessing of Almighty God, will lead to the increasing prosperity of My Indian Empire, and the greater happiness of its people"

Extract from King George V's Speech at the Delhi Coronation Durbar, 1911

Finally, I rejoice to have this opportunity of renewing in My own person those assurances which have been given you by My revered predecessors of the maintenance of your rights and privileges and of My earnest concern for your welfare, peace, and contentment

"May the Divine favour of Providence watch over My people and assist Me in My utmost endeavour to promote their happiness and prosperity

"To all present, feudatories and subjects, I tender Our loving greeting"

Extract from King George V's Proclamation, 1919

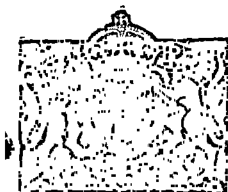
"I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities"

Extract from King George V's Proclamation, 1921

"In My former Proclamation I repeated the assurance given on many occasions by My Royal predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights and dignities of the Princes of India The Princes may rest assured that this pledge remains inviolate and inviolable"

GIPD—1(C)F&PD—9 4 29—1,500.





REPORT

OF THE

INDIAN STATES COMMITTEE

1928-29



REPORT

OF THE

INDIAN STATES COMMITTEE

1928-29

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INTRODUCTORY LETTER

To The Right Honourable Viscount Peel, P C , G B E ,

Secretary of State for India

MY LORD,

Appointment of our Committee and terms of reference

We were appointed by Your Lordship's predecessor, the Right Honourable the Earl of Birkenhead, P C , G C S I , on the 16th December 1927 our terms of reference being—

(1) to report upon the relationship between the Paramount Power and the Indian States with particular reference to the rights and obligations arising from —

(a) treaties engagements and sanads and

(b) usage, sufferance and other causes, and

(2) to inquire into the financial and economic relations between British India and the states, and to make any recommendations that the committee may consider desirable or necessary for their more satisfactory adjustment

Part (1) refers only to the existing relationship between the Paramount Power and the states Part (2) refers not only to the existing financial and economic relations between British India and the states but also invites us to make recommendations for the future

Origin of enquiry.

2 The request for an enquiry originated at a conference convened by His Excellency the Viceroy at Simla in May, 1927, when a representative group of Princes asked for the appointment of a special committee to examine the relationship existing between themselves and the Paramount Power and to suggest means for securing effective consultation and co-operation between British India and the Indian States and for the settlement of differences The Princes also asked for adequate investigation of certain disabilities under which they felt that they laboured

Preliminary arrangements

3. When our committee assembled at Delhi on the 14th January, 1928, we found that the Princes had no case ready. The Standing Committee of the Chamber of Princes had no permanent office or secretariat; many of the states had no properly arranged archives, and without prolonged search the Princes said they could not formulate their claims. Eventually it was agreed between our committee and the Standing Committee of the Chamber of Princes that we should visit the States during the winter months and then adjourn to England where their case would be presented before us. Eminent counsel, the Right Honourable Sir Leslie Scott, K.C., M.P., was retained by the Standing Committee of the Chamber and a number of Princes to represent them before us. A questionnaire was issued on the 1st March 1928 to all members of the Chamber of Princes and to the Ruling Chiefs entitled to representation therein and to the Local Governments in India. The questionnaire which defines and explains the scope of our enquiry forms Appendix I to our report.

Tours and assistance given

4. We visited fifteen states: Rampur, Patiala, Bikaner, Udaipur, Alwar, Jaipur, Jodhpur, Palanpur, Jamnagar, Baroda, Hyderabad, Mysore, Bhopal, Gwalior and Kashmir. At each of these states we discussed locally and informally such questions as were brought before us. We also paid a flying visit to Dholpur. Altogether we travelled some 8,000 miles in India and examined informally 48 witnesses. We returned to England early in May 1928. Their Highnesses the Rulers of Kashmir, Bhopal, Patiala, Cutch and Nawanagar, members of the Standing Committee of the Chamber of Princes, also arrived in England during the course of the summer and were present when Sir Leslie Scott in October and November formally put forward the case on behalf of the states which he represented. We desire to express our deep obligations to the Princes whose states we visited for their great and traditional hospitality; to express our regret to those whose invitations to visit their states we were unable to accept; and to acknowledge the unfailing courtesy and assistance which we have everywhere received from the Standing Committee, from the Princes individually, from the ministers and governments of the several states, and from their counsel Sir Leslie Scott, assisted by others, and especially by Colonel Haksar, C.I.E. We desire also to acknowledge the ready assistance that has been given us throughout by His Excellency Lord Irwin and the Political and other Departments of the Government of India.

Representations on behalf of subjects of states, and feudatory chiefs and jagirdars

5 In the course of our enquiry we were approached by persons and associations purporting to represent the subjects of Indian States It was quite clear that our terms of reference did not cover an investigation of their alleged grievances and we declined to hear them but we allowed them to put in written statements and in the course of our tours we endeavoured to ascertain the general character of the administration in the states We also received representations from many of the Feudatory Chiefs of Bihar and Orissa requesting a reconsideration of their status and powers as well as representations from the feudatories of the Kolhapur State These also we have not dealt with as they fall outside the scope of our enquiry

Divergent views of Princes

6 It was soon obvious to us that very divergent views on important matters were held by the Princes themselves The important states Hyderabad Mysore Baroda Travancore as well as Cochin Rampur Junagadh and other states in Kathiawar and elsewhere declined to be represented by Sir Leslie Scott and preferred to state their own case in written replies to the questionnaire We can however claim that we have done our best to ascertain so far as this is possible the views of the Princes as a body

Voluminous documents

7 Altogether seventy replies to the questionnaire have been received from different states Many of these although instructive as to the feelings of the Princes and Chiefs refer to matters outside our enquiry such as requests for the revision of state boundaries claims in regard to territories settled or transferred many years back applications to revise decisions by the Paramount Power made at almost any time during the last century, requests in the matter of precedence salutes titles honours and personal dignities These requests and applications will be forwarded to the Political Department of the Government of India

Acknowledgments to secretary and staff

8 In conclusion we desire to bring to Your Lordship's notice the admirable work done by our secretary Lieutenant Colonel G D Ogilvie C I E His exceptional knowledge of the history of recent discussions his great popularity with the Princes his industry zeal and ability have very greatly impressed us and placed us under a heavy obligation

We desire also to record our appreciation of the very satisfactory manner in which the office staff of the committee performed their duties

Sections of the report

9 We have drawn up our report in four sections —

I —Relationship between the Paramount Power and the States Historical summary

II —Relationship between the Paramount Power and the States More detailed examination

III —Financial and economic relations between British India and the States Machinery

IV —Financial and economic relations between British India and the States Specific proposals

And we have the honour to be,

Your Lordship s Most obedient Servants,

HARCOURT BUTLER.

SIDNEY PEEL

W S HOLDSWORTH.

The 14th February, 1929

REPORT

I —RELATIONSHIP BETWEEN THE PARAMOUNT POWER AND THE STATES HISTORICAL SURVEY.

Two Indias

10 Interwoven in the pink map of India are large patches of yellow which represent the Indian States * These states survived the establishment by the British of their dominion on the ruins of the Moghul empire and the Mahratta supremacy They cover an area of 598 138 square miles with a population of 68 6 2 974 people or about two fifths of the area and one fifth of the population respectively of India including the states but excluding Burma † Politically there are thus two Indias British India governed by the Crown according to the statutes of Parliament and enactments of the Indian legislature and the Indian States under the suzerainty of the Crown and still for the most part under the personal rule of their Princes Geographically India is one and indivisible made up of the pink and the yellow The problem of statesmanship is to hold the two together

Indian States

11 The Indian States as they exist to day fall into three distinct classes

Class of State Estate etc	Number	Area in square miles	Population	Revenue in crores of rupees ‡
I States the rulers of which are members of the Chamber of Princes in their own right	108	514 886	59 847 186	42 16
II States the rulers of which are represented in the Chamber of Princes by twelve members of their order elected by themselves	127	76 846	8 004 114	2 89
and others	327	6 406	801 674	74

Indian State is, in fact extremely elastic as size and government It covers at one end of with an area of 82 700 square miles with a

this report

the states but excluding Burma is 1 571 675 of India including the states but excluding Burma is 305 730 988

rupees at an exchange of one shilling and six pence to £750 000

Importance of States

11 The Indian States still form the most picturesque part of India they also represent, where the Prince and his people are Hindus, the ancient form of government in India In the Brahmanic polity the Kshatriya (Rajput) Raja is as necessary an element as the Brahman priest and all that is national in Hindu feeling is turned towards him Not always does the tie of religion unite the ruler and his subjects In the great state on the north (Kashmir) the ruler is Hindu whilst most of his subjects are Moslem and in the great state on the south (Hyderabad) the ruler is a Mussulman whilst most of his subjects are Hindus Truly it may be said that the Indian States are the Indian India

Importance and services of Princes.

14 The Indian Princes have played an important part in imperial history Their loyalty at the time of the mutiny, their response to all patriotic calls upon them their noble services in the Great War their splendid devotion to the Crown and the person of the King Emperor and to the Royal Family are one of the proud things of our annals a glory of the Empire To their King-Emperor they look with the devotion of a younger world All service to their King Emperor ranks the same with them

Progress of states.

15 For long they stood upon the ancient ways but they too have been swept by the breath of the modern spirit Their efforts to improve their administration on the lines generally followed in British India have already in many cases been attended with conspicuous success Of the 108 Princes in class I, 30 have established legislative councils most of which are at present of a consultative nature only 40 have constituted High Courts more or less on British Indian models 34 have separated executive from judicial functions 56 have a fixed privy purse 16 have started a regular graded civil list of officials and 54 have pension or provident fund schemes Some of these reforms are still no doubt inchoate or on paper and some states are still backward but a sense of responsibility to their people is spreading among all the states and growing year by year A new spirit is abroad Conditions have very largely changed in the last twenty years

Political diversity of states

16 Diverse as the states are geographically and historically, they are even more diverse politically Of the total number of states forty only have treaties with the Paramount Power, a larger number have some form of engagement or sanad* the remainder have been recognised in different ways The classification of the states has given rise to some discussion and there is naturally a strong desire on the part of the lower graded states to rise higher On the other hand informal suggestions have been made to us that representation in the Chamber of Princes should be limited to those rulers who have treaty rights and large powers of internal sovereignty It is not within our province to reclassify the Indian

* Sir Henry Maine defined the term *sanad* as an ordinary instrument of contract grant or cession used by the Emperors of Hindustan He points out that sanads may have the same effect

Paramount Power

18 The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor-General in Council who are responsible to the Parliament of Great Britain. Until 1835 the East India Company acted as trustees of and agents for the Crown; but the Crown was, through the Company, the Paramount Power The Act of 1858, which put an end to the administration of the Company, did not give the Crown any new powers which it had not previously possessed It merely changed the machinery through which the Crown exercised its powers

Fact and development of paramountcy.

19 The fact of the paramountcy of the Crown has been acted on and acquiesced in over a long period of time It is based upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice The general course of its evolution has been well described by a great modern jurist "The same people," wrote Professor Westlake, "has determined by its action the constitutions of the United Kingdom and of India, and as a consequence these are similar so far as that

neither is an engine turned structure, but the architecture of each includes history, theory and modern fact, and the books which describe them are similarly varied in their composition On the side of substance the principal difference between them is that, while in both the field covered by express definition leaves room for questions to arise in the Indian constitution an acknowledged supreme will decides every question which arises, but in that of the United Kingdom a balance of power causes questions to be less easy of solution ' *

Changes in policy.

20 The paramountcy of the Crown acting through its agents dates from the beginning of the nineteenth century when the British became the *de facto* sole and unquestionable Paramount Power in India The policy of the British Government towards the states passed as stated in the report of Mr Montagu and Lord Chelmsford *from the original plan of non intervention in all* matters beyond its own ring fence to the policy of subordinate isolation initiated by Lord Hastings that in its turn gave way before the existing conception of the relation between the states and the Government of India, which may be described as one of union and co operation on their part with the Paramount Power

Position of treaties and intervention Hyderabad case cited

21 The validity of the treaties and engagements made with the Princes and the maintenance of their rights, privileges and dignities have been both asserted and observed by the Paramount Power But the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political social and economic conditions The process commenced almost as soon as the treaties were made The case of Hyderabad may be cited by way of illustration Hyderabad is the most important state in India In 1800 the British made a treaty with His Highness the Nizam article 15 of which contains the following clause —

The Honourable Company s Government on their part hereby declare that they have no manner of concern with any of His Highness children relations, subjects or servants with respect to whom His Highness is absolute '

Yet so soon as 1804 the Indian Government successfully pressed the appointment of an individual as Chief Minister In 1815 the same Government had to interfere because the Nizam s sons offered violent resistance to his orders The administration of the state gradually sank into chaos Cultivation fell off, famine prices prevailed, justice was not obtainable, the population began to

* ' The Native States of India ' Law Quarterly Review, Vol XXVI 318

Reaction to doctrine of *laissez-faire*. Statement of Lord Canning

22 From this policy of intervention there was in time a reaction. For some years before India passed under the direct government of the Crown, the doctrine of *laissez faire* prevailed. The states were left alone and in the event of revolt, misrule, failure of heirs etc., the Paramount Power stepped in with annexation. This policy was abandoned again after the Crown assumed the direct government of India. That great historical event, with its numerous implications, was thus described by Lord Canning the first Viceroy of India —

'The Crown of England", he said, "stands forth the unquestioned ruler and Paramount Power in all India, and is for the first time brought face to face with its feudatories. There is a reality in the suzerainty of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chiefs"

Later in his despatch, dated the 30th April, 1860, Lord Canning laid down the two great principles which the British Government has followed ever since in dealing with the states: (1) that the integrity of the states should be preserved by perpetuating the rule of the Princes whose power to adopt heirs was recognised by sanads granted in 1862, (2) that flagrant misgovernment must be prevented or arrested by timely exercise of intervention

Political practice and intervention.

23. With this acceptance of the necessity of intervention modern political practice may be said to have begun. It received an extension from the development of a strong Political Department. Intervention reached its zenith during the viceroyalty of Lord

Curzon The administration of many states broke down temporarily under the strain of the great famine of 1899, and drastic intervention became necessary in order to save life within the state and prevent the people of the states from wandering over British India In many states the Paramount Power was on grounds of humanity compelled to take over the direction of famine relief operations

Pronouncements of Paramount Power on paramountcy

24 The Paramount Power has defined its authority and right to intervene with no uncertain voice on several occasions in the Baroda case (1873 75) the Manipur case (1891 92), and so lately as March 1926 in the letter of His Excellency Lord Reading to His Exalted Highness the Nizam of Hyderabad which carried the authority of His Majesty s Government This letter is so important that we quote it *in extenso* as Appendix II to this report

Baroda case, 1873-75

25 In the Baroda case a commission was appointed to investigate complaints brought against the Gaekwar s administration and to suggest reforms In reply to his protest against the appointment of the commission as not being warranted by the relations subsisting between the British Government and the Baroda State the Gaekwar was informed as follows by the Viceroy and Governor General —

This intervention although amply justified by the language of treaties rests also on other foundation Your Highness has justly observed that the British Government is undoubtedly the Paramount Power in India and the existence and prosperity of the Native States depend upon its fostering favour and benign protection This is especially true of the Baroda State both because of its geographical position intermixed with British territory, and also because a subsidiary force of British troops is maintained for the defence of the state the protection of the person of its ruler, and the enforcement of his legitimate authority

My friend I cannot consent to employ British troops to protect any one in a course of wrong doing Misrule on the part of a government which is upheld by the British power is misrule in the responsibility for which the British Government becomes in a measure involved It becomes therefore not only the right but the positive duty of the British Government to see that the administration of a state in such a condition is reformed and that gross abuses are removed

It has never been the wish of the British Government to interfere in the details of the Baroda administration nor is it my desire to do so now The immediate responsibility for the Government of

the state rests, and must continue to rest upon the Gaekwar for the time being He has been acknowledged as the sovereign of Baroda, and he is responsible for exercising his sovereign powers with proper regard to his duties and obligations alike to the British Government and to his subjects If these obligations be not fulfilled if gross misgovernment be permitted, if substantial justice be not done to the subjects of the Baroda State, if life and property be not protected, or if the general welfare of the country and people be persistently neglected the British Government will assuredly intervene in the manner which in its judgment may be best calculated to remove these evils and to secure good government Such timely intervention, indeed, to prevent misgovernment culminating in the ruin of the state is no less an act of friendship to the Gaekwar himself than a duty to his subjects"

Manipur case, 1891-92.

26 In 1891 violent disputes occurred in the Manipur State which led to the abdication of the Maharaja Mr Quinton, Chief Commissioner of Assam, was instructed to proceed to Manipur in order to bring about a settlement of the disputes On arrival, he and four British officers who were with him were treacherously made prisoners and forthwith beheaded under the orders of the Senapati or General (the brother of the Maharaja), and of the Prime Minister of the State An expedition was at once sent into Manipur to avenge this outrage Those responsible were arrested, tried and executed In the course of the trial the counsel for the accused urged that the state of Manipur was independent and that its rulers were not liable to be tried for waging war against the Queen-Empress, and it was contended that they were justified in repelling an attack made upon the Senapati's house "without even a declaration of war by the British Government" In a Resolution of the 21st August, 1891, reviewing the case, which was issued by the Governor General in Council, the position of the British Government in relation to the Indian States was explained as follows —

"The Governor General in Council cannot admit this argument, (i e , the argument used by counsel for the defence) The degree of subordination in which the Manipur State stood towards the Indian Empire has been more than once explained in connection with these cases, and it must be taken to be proved conclusively that Manipur was a subordinate and protected state which owed submission to the Paramount Power, and that its forcible resistance to a lawful order, whether it be called waging war, treason, rebellion, or by any other name, is an offence the commission of which justifies the exaction of adequate penalties from individuals concerned in such resistance as well as from the state as a whole The prin of international law have no bearing upon the relations betw

Government of India as representing the Queen-Empress on the one hand, and the Native States under the suzerainty of Her Majesty on the other The paramount supremacy of the former presupposes and implies the subordination of the latter In the exercise of their high prerogative, the Government of India have, in Manipur as in other protected states, the unquestioned right to remove by administrative order any person whose presence in the state may seem objectionable They also had the right to summon a darbar through their political representative for the purpose of declaring their decision upon matters connected with the expulsion of the ex-Maharaja, and if their order for the deportation of the Senapati were not obeyed, it was this officer's duty to take proper steps for his forcible apprehension In the opinion of the Governor General in Council any armed and violent resistance to such arrest was an act of rebellion, and can no more be justified by a plea of self-defence than could resistance to a police officer armed with a magistrate's warrant in British India The Governor-General in Council holds, therefore, that the accused persons were liable to be tried for waging war against the Queen "

Hyderabad case, 1926.

27 From the letter of His Excellency Lord Reading to His Exalted Highness the Nizam (Appendix II) the following general propositions may be extracted —

* * * * * * *

" The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing Its supremacy is not based only upon treaties and engagements, but exists independently of them and, quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India

* * * * * * *

"The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason But the internal, no less than the external, security which the Ruling Princes enjoy is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned or the general welfare of the people of a State is seriously and grievously affected by the action of its Government it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie The varying

degrees of internal sovereignty which the Rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility

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It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the States and itself and even though a Court of Arbitration may be appointed in certain cases its function is merely to offer independent advice to the Government of India, with whom the decision rests'

Lord Minto's definition of paramountcy.

28 The Paramount Power has in practice defined the operation of its paramountcy at different times particularly when reforms of the administration of British India have been in the air during the viceroyalties that is of Lord Minto and Lord Chelmsford Lord Minto who had previously consulted the leading Princes as to the spread of sedition in several of the states made an important pronouncement of Policy at Udaipur on the 3rd November 1909

Udaipur speech

29 He dwelt upon the identity of interests between the Imperial Government and the Princes, upon the mutual recognition of which the future history of India would be largely moulded "Our policy," he said, "is, with rare exceptions one of non interference in the internal affairs of Native States But in guaranteeing their internal independence and in undertaking their protection against external aggression, it naturally follows that the Imperial Government has assumed a certain degree of responsibility for the general soundness of their administration and would not consent to incur the reproach of being an indirect instrument of misrule There are also certain matters in which it is necessary for the Government of India to safeguard the interests of the community as a whole as well as those of the Paramount Power such as railways telegraphs and other services of an imperial character But the relationship of the Supreme Government to the states is one of suzerainty And Lord Minto went on to point out the diversity of conditions between the states which rendered dangerous all attempts at uniformity and subservience to precedent and necessitated the decision of questions with due regard to existing treaties, the merits of each case, local conditions, antecedent circumstances and the particular stage of development feudal or constitutional, of individual principalities It was part of policy to avoid the issue of general rules as far as [illegible] of administration on the [illegible] tical officers had a dual [illegible] and also as the interpreters of the sentiments and aspirations of the states

Lord Hardinge and Princes

30 Some years later at Jodhpur Lord Hardinge referred to the Princes as helpers and colleagues in the great task of imperial rule Lord Hardinge also initiated conferences with the Ruling Princes on matters of imperial interest and on matters affecting the states as a whole

Montagu Chelmsford report

31 During the viceroyalty of Lord Chelmsford the spirit of reform in British India was again active and reflected on the relationship between the Paramount Power and the states In their report on Indian Constitutional Reforms Mr Montagu and Lord Chelmsford thus described the position of the states

The states are guaranteed security from without, the Paramount Power acts for them in relation to foreign powers and other states and it intervenes when the internal peace of their territories is seriously threatened On the other hand the states relations to foreign powers are those of the Paramount Power they share the obligation for common defence and they are under a general responsibility for the good government and welfare of their territories

Recommendations in Montagu Chelmsford report

32 The authors of the report recommended the establishment of a Chamber of Princes with a Standing Committee They recommended also that political practice should be codified and standardised that Commissions of Enquiry and Courts of Arbitration should be instituted that a line of demarcation should be drawn between rulers enjoying full powers and those who do not that all important states should be placed in direct political relations with the Government of India and that machinery should be set up for joint deliberation on matters of common interest to British India and the Indian States

Chamber of Princes Its importance

33 The Chamber of Princes was set up by the Crown by Royal Proclamation on the 8th February 1921 and the Chamber was inaugurated by His Royal Highness the Duke of Connaught with a memorable speech The Chamber and its Standing Committee may not as yet have fulfilled all the expectations formed of them their decisions do not bind the Princes as a body or individually and their proceedings are not held in public some of the more important Princes have hitherto refused to attend meetings of the Chamber His Exalted Highness the Nizam has always adopted an attitude of entire detachment from it there have been criticisms of the rules of procedure recently met by the action of Lord Irwin But nevertheless the constitution of the Chamber and its Standing Committee was a great and far reaching event It meant that the

Paramount Power had once and for all abandoned the old policy of isolating the states and that it welcomed their co operation

Codification of political practice and attitude of Paramount Power.

34 In 1919 during Lord Chelmsford's viceroyalty the codification of political practice was taken up in consultation with the states Twenty three points were formulated as representing cases in which the states complained that the Government of India had unwarrantably interfered in their internal administration A discussion on these points and some others subsequently added, was begun between representatives of the Government of India and the Standing Committee of the Chamber In nine cases agreement was reached and Resolutions were issued by the Government of India laying down the procedure to be adopted for the future in others discussion is still proceeding Though the progress made has for various reasons not been so rapid as it might have been a great principle has been established The states have been taken into open conference The policy of secrecy has been abandoned For the old process of decision without discussion has been substituted the new process of decision after open conference and consultation

Sir Robert Holland's statement in 1919

35 At the first meeting of the committee appointed by the Conference of Ruling Princes and Chiefs and the representatives of the Government of India in September 1919 Mr (now Sir Robert Holland who was then officiating Political Secretary to the Government of India summed up the position of the Government of India He said that there had been in the past a constant development of constitutional doctrine under the strain of new conditions as the British Power had welded the country into a composite whole That doctrine as for instance in the case of extra territorial jurisdiction railway and telegraph construction administration of cantonments and various other matters had been superimposed upon the original relations of many states with the Crown but had evolved in harmony with the needs of the Indian body politic and had not been inspired by any desire to limit the sovereign powers of the Indian rulers The rulers consent to such new doctrine had not always been sought in the past partly because it was often evolved piecemeal from precedents affecting individual states and partly because it would have been impracticable to secure combined assent within a reasonable period It was admitted however that while the justice and necessity of the new measures was clearly seen their effect upon the treaty position was not appreciated at the time with the result that a body of usage influencing the relations with the states had come into force through a process which though benevolent in intention was nevertheless to some extent arbitrary

Harmony between Paramount Power and States

36 In illustration of the proposition that the states have been adversely affected by the arbitrary action of the Paramount Power a considerable number of cases extending over more than a century have been laid before us by Sir Leslie Scott on behalf of the states which he represents, and in the replies of other states to our questionnaire We are not asked nor have we authority to pass judgment in such cases still less to grant a remedy We have not heard we have not thought it necessary to hear the Paramount Power in regard to such cases We are in no sense a judicial tribunal nor can we exercise judicial functions * That the Paramount Power has acted on the whole with consideration and forbearance towards the states that many states owe their continued existence to its solicitude is undoubted and admitted Few Governments at any time in history could look back on more than a century of action without some historical regret that certain things had been done and that certain things had not been done Many of the grievances put forward by the states relate to times in which the administration of the states was very backward in comparison with what it is to-day Some of the grievances have already been met by concessions on the part of the Paramount Power One of the greatest of these that the rights of the Princes have been given away during minority administrations has been met by a Resolution of the Government of India in 1917 Without pressure on the states over railways India would not have the communications that it has to-day without pressure the states would not have shown the progress that they do to day Taking a broad view of the relationship between the Paramount Power and the states we hold that thanks to good feeling and compromise on both sides it has in the main been one of remarkable harmony for the common weal

Intervention by Paramount Power

37 In the last ten years the Paramount Power has interfered actively in the administration of individual states in only eighteen cases In nine of these interference was due to maladministration in four to gross extravagance or grave financial embarrassment The remaining five cases were due to miscellaneous causes In only three cases has the ruler been deprived of his powers No bad record this considering the number of states and the length of time concerned! We have heard comments from some of the Princes themselves that in certain of these cases intervention should have taken place sooner than was actually the case This is a difficult matter for which rules of procedure cannot well provide The decision when to intervene must be left and experience has shown that it can be safely left to the discretion of the Viceroy of the day

* This was explained from the beginning vide paragraph 3 of the questionnaire (Appendix I)

II —RELATIONSHIP BETWEEN THE PARAMOUNT POWER AND THE STATES MORE DETAILED EXAMINATION

Legal opinion of eminent counsel

38 We will now consider the relationship between the Paramount Power and the states in greater detail In this we have the advantage of the opinion of eminent counsel on the legal and constitutional aspects of the questions raised by the terms of reference to us (Appendix III) an opinion placed before us by Sir Leslie Scott With much of that opinion we find ourselves in agreement We agree that the relationship of the states to the Paramount Power is a relationship to the Crown that the treaties made with them are treaties made with the Crown and that those treaties are of continuing and binding force as between the states which made them and the Crown We agree that it is not correct to say that the treaties with the Native States must be read as a whole a doctrine to which there are obvious objections in theory and in fact There are only forty states with treaties but the term in this context covers engagements and sanads The treaties were made with individual states and although in certain matters of imperial concern some sort of uniform procedure is necessary cases affecting individual states should be considered with reference to those states individually their treaty rights their history and local circumstances and traditions and the general necessities of the case as bearing upon them

Criticism of legal opinion

39 On the other hand we cannot agree with certain statements and arguments that occur in this opinion The relationship of the Paramount Power with the states is not a merely contractual relationship resting on treaties made more than a century ago It is a living growing relationship shaped by circumstances and policy resting as Professor Westlake has said on a mixture of history theory and modern fact The novel theory of a paramountcy agreement limited as in the legal opinion is unsupported by evidence is thoroughly undermined by the long list of grievances placed before us which admit a paramountcy extending beyond the sphere of any such agreement and in any case can only rest upon the doctrine which the learned authors of the opinion rightly condemn that the treaties must be read as a whole It is not in accordance with historical fact that when the Indian States came into contact with the British Power they were independent each possessed of full sovereignty and of a status which a modern international lawyer would hold to be governed by the rules of international law In fact none of the states ever held international status Nearly all of them were subordinate or tributary

to the Moghul empire the Mahratta supremacy or the Sikh kingdom, and dependent on them Some were rescued others were created, by the British

Validity of usage and sufferance

40 We cannot agree that usage in itself is in any way sterile Usage has shaped and developed the relationship between the Paramount Power and the states from the earliest times almost in some cases as already stated from the date of the treaties themselves Usage is recited as a source of jurisdiction in the preamble to the Foreign Jurisdiction Act 1890 (53 and 54 Vict C 37) and is recognised in decisions of the Judicial Committee of the Privy Council Usage and sufferance have operated in two main directions In several cases where no treaty engagement or sanad exists usage and sufferance have supplied its place in favour of the states In all cases usage and sufferance have operated to determine questions on which the treaties engagements and sanads are silent they have been a constant factor in the interpretation of these treaties engagements and sanads and they have thus consolidated the position of the Crown as Paramount Power

Pronouncement by Government of India, 1877

41 These important effects of the operation of usage and sufferance were pointed out by the Government of India in 1877 The paramount supremacy of the British Government it was then said is a thing of gradual growth it has been established partly by conquest partly by treaty partly by usage and for a proper understanding of the relations of the British Government to the Native States regard must be had to the incidents of this *de facto* supremacy as well as to treaties and charters in which reciprocal rights and obligations have been recorded and the circumstances under which those documents were originally framed In the life of states as well as of individuals documentary claims may be set aside by overt acts and a uniform and long continued course of practice acquiesced in by the party against whom it tells whether that party be the British Government or the Native State must be held to exhibit the relations which in fact subsist between them

Statements opposed to historical fact

42 It is not in accordance with historical fact that paramountcy gives the Crown definite rights and imposes upon it definite duties in respect of certain matters only *viz* those relating to foreign affairs and external and internal security unless those terms are made to cover all those acts which the Crown through its agents has considered necessary for imperial purposes for the good government of India as a whole the good government of individual states

the suppression of barbarous practices, the saving of human life, and for dealing with cases in which rulers have proved unfit for their position It is not in accordance with historical fact to say that the term 'subordinate co operation used in many of the treaties is concerned solely with military matters The term has been used consistently for more than a century in regard to political relations In these and other respects the opinion of counsel appears to us to ignore a long chapter of historical experience

Relationship between Paramount Power and States

43 What then is the correct view of the relationship between the states and the Paramount Power? It is generally agreed that the states are *sui generis* that there is no parallel to their position in history that they are governed by a body of convention and usage not quite like anything in the world They fall outside both international and ordinary municipal law but they are governed by rules which form a very special part of the constitutional law of the Empire Some sixty years ago Sir Henry Maine regarded their status as quasi international Professor Westlake regarded the rules which regulate their status as part of the constitutional law of the Empire * A similar view was expressed by Sir Frederick Pollock who held that in cases of doubtful interpretation the analogy of international law might be found useful and persuasive †

Sir Henry Maine on sovereignty

44 In a well known passage in his minute in the Kathiawar case (1864 Sir Henry Maine refers to the relationship of divided sovereignty between the Paramount Power and the states ' Sovereignty he wrote is a term which in international law indicates a well ascertained assemblage of separate powers or privileges The rights which form part of the aggregate are specifically named by the publicists who distinguish them as the right to make war and peace the right to administer civil and criminal justice the right to legislate and so forth A sovereign who possesses the whole of this aggregate of rights is called an *independent* sovereign but there is not nor has there ever been anything in international law to prevent some of those rights being lodged with one possessor and some with another Sovereignty has always been regarded as divisible It may perhaps be worth observing that according to the more precise language of modern publicists sovereignty is divisible but independence is not

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* The Native States of India Law Quarterly Review Volume XXVI

† Law Quarterly Review XXVII 88 9

Although the expression 'partial independence' may be popularly used, it is technically incorrect. Accordingly there may be found in India every shade and variety of sovereignty, but there is only one independent sovereign—the British Government."

Activities of Paramount Power.

45. We are concerned with the relationship between the Paramount Power and the states as it exists to-day, the product of change and growth. It depends, as we have already said, upon treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice.* As a general proposition, and by way of illustration rather than of definition, the activities of the Paramount Power may be considered under three main heads: (1) external affairs; (2) defence and protection; (3) intervention.

External affairs.

46. The Indian States have no international life. They cannot make peace or war or negotiate or communicate with foreign states. This right of the Paramount Power to represent the states in international affairs, which has been recognised by the Legislature,† depends partly on treaties but to a greater extent on usage. That this right of the Paramount Power to represent the states in international affairs carries with it the duty of protecting the subjects of those states while residing or travelling abroad, is also recognised by the Legislature. For international purposes state territory is in the same position as British territory, and state subjects are in the same position as British subjects. The rights and duties thus assumed by the Paramount Power carry with them other consequential rights and duties. Foreign states will hold the Paramount Power responsible if an international obligation is broken by an Indian State. Therefore the Princes co-operate with the Paramount Power to give effect to the international obligations entered into by the Paramount Power. For instance, they surrender *foreigners in accordance with the extradition treaties* entered into by the Paramount Power; they co-operate with the Paramount Power to fulfil its obligations of neutrality; they help to enforce the duties of the Paramount Power in relation to the suppression of

* [illegible]

† 39 40 Vict. c. 46. Preamble.

the slave trade Since a foreign power will hold the Paramount Power responsible for injuries to its subjects committed in an Indian State, the Paramount Power is under obligation to see that those subjects are fairly treated Of these duties Professor Westlake very truly says that they are owed by the states to Great Britain as the managing representative of the Empire as a whole, and that they consist in helping Great Britain to perform international duties which are owed by her in that character On the other hand the Paramount Power when making treaties will in view of special *circumstances existing in the Indian States*, insert reservations in order to meet these special circumstances In all such cases there is, in practice, no difference between the states and the Paramount Power, but the states ask that they may be consulted where possible in advance before they are committed to action This request is in our opinion eminently reasonable and should be accepted

Interstatal relations

47 Until quite recently the Paramount Power acted for the states not only in their relations with foreign countries but also in all their relations with one another During the present century circumstances have combined to lead to greater intercommunication between the states But they cannot cede sell exchange or part with their territories to other states without the approval of the Paramount Power nor without that approval can they settle interstatal disputes As we do not allow the states to go to war with one another we claim the right as a consequence and undertake the duty of preventing those quarrels and grievances which among really independent powers would lead to international conflict This principle stated by Sir Henry Maine in 1863 still hold good

Defence and protection

48 *The Paramount Power is responsible for the defence of* both British India and the Indian States and as such has the final voice in all matters connected with defence including establishments war material communications etc It must defend both these separate parts of India against foes foreign and domestic It owes this duty to all the Indian States alike Some of the states contribute in different ways to the cost of this defence by the payment of tribute by the assignment of lands by the maintenance of Indian States Forces All the states rallied to the defence of the Empire during the Great War and put all their resources at the disposal of the Government But whether or not a state makes a contribution to the cost of defence the Paramount Power

is under a duty to protect the states It follows from this duty of protection, first, that the British Government is bound to do everything really necessary for the common defence and the defence of the states, secondly, that the states should co-operate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of that duty; thirdly, that they should co operate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other states These obligations are generally accepted and the states work together with the British Government to their utmost ability It follows that the Paramount Power should have means of securing what is necessary for strategical purposes in regard to roads railways aviation, posts telegraphs, telephones, and wireless cantonments, forts, passage of troops and the supply of arms and ammunition

Princes and people.

49 The duty of the Paramount Power to protect the states against rebellion or insurrection is derived from the clauses of treaties and sanads from usage, and from the promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes This duty imposes on the Paramount Power correlative obligations in cases where its intervention is asked for or has become necessary The guarantee to protect a Prince against insurrection carries with it an obligation to enquire into the causes of the insurrection and to demand that the Prince shall remedy legitimate grievances and an obligation to prescribe the measures necessary to this result

Popular demands in states

50 The promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it a duty to protect the Prince against attempts to eliminate him, and to substitute another form of government If these attempts were due to misgovernment on the part of the Prince, protection would only be given on the conditions set out in the preceding paragraph If they were due, not to misgovernment, but to a widespread popular demand for change, the Paramount Power would be bound to maintain the rights, privileges and dignity of the Prince, but it would also be bound to suggest such measures as would satisfy this demand without eliminating the Prince No such case has yet arisen, or is likely to arise if the Prince's rule is just and efficient, and in particular if the advice given by His Excellency Lord Irwin to the Princes, and accepted in principle by their Chamber, is adopted in regard to a fixed privy purse, security of tenure in the public services and an independent judiciary

Intervention

51. The history of intervention has already been described. Intervention may take place for the benefit of the Prince, of the state, of India as a whole.

For benefit of Prince.

52. Lord Canning's adoption sanads of 1862 recited the desire of the Crown that the Governments of the several Princes and Chiefs in India who now govern their territories should be perpetuated, and that the representation and dignity of their houses should be continued. In order to secure the fulfilment of this desire the Paramount Power has assumed various obligations in respect to matters connected with successions to the houses of the Ruling Princes and Chiefs. In the first place it was laid down in 1891 that it is the right and the duty of the British Government to settle successions in subordinate Native States. Every succession must be recognised by the British Government and no succession is valid until recognition has been given. In 1917 however this view of the position was modified and in a Memorandum on the ceremonies connected with successions issued by the Government of India it was laid down that where there is a natural heir in the direct line he succeeds as a matter of course and it was arranged that in such cases the recognition of his succession by the King Emperor should be conveyed by an exchange of formal communications between the Prince and the Viceroy. In the case of a disputed succession the Paramount Power must decide between the claimants having regard to their relationship to their personal fitness and to local usage. In the second place Lord Canning's sanads guaranteed to Princes and Chiefs the right on failure of natural heirs to adopt a successor in accordance with Hindu or Muhammadan Law. But such adoption in all cases requires the consent of the Paramount Power. In the third place the Paramount Power has in the case of a minority of a Ruling Prince very large obligations to provide for the administration of the state and for the education of the minor. These obligations obvious and admitted of the Paramount Power to provide for minorities afford perhaps as strong an illustration as any other of the way in which usage springs up naturally to supply what is wanting in the terms of treaties that have grown old. Usage in fact lights up the dark places of the treaties.

For benefit of state

53. The conduct of the Prince may force the Paramount Power to intervene both for the benefit of the state and the benefit of the successors to the Prince. It is bound to

of gross misrule, and its intervention may take the form of the deposition of the Prince the curtailment of his authority or the appointment of an officer to exercise political superintendence or supervision In all these cases a commission must, under a recent Resolution of the Government of India, be offered, to enquire and report before any action is taken The Paramount Power will also intervene if the ruler though not guilty of misrule has been guilty of disloyalty or has committed or been a party to a serious crime Similarly it will intervene to suppress barbarous practices, such as *sati* or infanticide or to suppress torture and barbarous punishment

For settlement and pacification

54 The small size of the state may make it difficult for it to perform properly the functions of government In these cases the Paramount Power must intervene to carry out those functions which the state cannot carry out The general principle was stated by Sir Henry Maine in 1864, in reference to Kathiawar He said Even if I were compelled to admit that the Kathiawar States are entitled to a larger measure of sovereignty, I should still be prepared to maintain that the Government of India would be justified in interfering to the extent contemplated by the Governor-General There does not seem to me to be the smallest doubt that if a group of little independent states in the middle of Europe were hastening to utter anarchy, as these Kathiawar States are hastening the Greater Powers would never hesitate to interfere for their settlement and pacification in spite of their theoretical independence

For benefit of India

55 Most of the rights exercised by the Paramount Power for the benefit of India as a whole refer to those financial and economic matters which fall under the second part of our terms of reference They will be dealt with later in our report At this point it is only necessary to note a fact to which due weight has not always been given It is in respect of these financial and economic matters that the dividing line between state sovereignty and the authority of the Paramount Power runs and apart from interferences justifiable on international grounds or necessary for national defence it is only on the ground that its interference with state sovereignty is for the economic good of India as a whole that the Paramount Power is justified in interposing its authority It is not justified in interposing its authority to secure economic results which are beneficial only or mainly to British India in a case in which the economic interests of British India and the states conflict

British jurisdiction in certain cases

56 Some of the treaties contain clauses providing that British jurisdiction shall not be introduced into the states, and it is the fact that the states are outside the jurisdiction of the British courts, and that British law does not apply to their inhabitants, which is the most distinct and general difference between the states and British India Nevertheless the Paramount Power has found it necessary, in the interests of India as a whole, to introduce the jurisdiction of its officers in particular cases such as the case of its troops stationed in cantonments and other special areas in the Indian States European British subjects and servants of the Crown in certain circumstances

Impossible to define paramountcy

57 These are some of the incidents and illustrations of paramountcy We have endeavoured, as others before us have endeavoured, to find some formula which will cover the exercise of paramountcy, and we have failed as others before us have failed, to do so The reason for such failure is not far to seek Conditions alter rapidly in a changing world Imperial necessity and new conditions may at any time raise unexpected situations Paramountcy must remain paramount it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the states Nor need the states take alarm at this conclusion Through paramountcy and paramountcy alone have grown up and flourished those strong foreign relations between the Crown and the Princes on which at all times the states rely On paramountcy and paramountcy alone can the states rely for their preservation through the generations that are to come Through paramountcy is pushed aside the danger of destruction or annexation

Princes should not be handed over without their agreement to new government in India responsible to Indian legislature

58 Realising this the states demand that without their own agreement the rights and obligations of the Paramount Power should not be assigned to persons who are not under its control for instance an Indian government in British India responsible to an Indian legislature If any government in the nature of a dominion government should be constituted in British India such a government would clearly be a new government resting on a new and written constitution The contingency has not arisen we are not directly concerned with it the relations of the states to such

a government would raise questions of law and policy which we cannot now and here foreshadow in detail We feel bound however, to draw attention to the really grave apprehension of the Princes on this score, and to record our strong opinion that, in view of the historical nature of the relationship between the Paramount Power and the Princes the latter should not be transferred without their own agreement to a relationship with a new government in British India responsible to an Indian legislature

III.—FINANCIAL AND ECONOMIC RELATIONS BETWEEN BRITISH INDIA AND THE STATES MACHINERY.

Importance of question.

59 The second part of our enquiry is the more immediately practical, opening up as it does the financial and economic relations between British India and the states In our tours round the states we were impressed with the importance of this problem On all sides we found demands for better and more expensive administration These demands originate with the desire of the Princes themselves, the claims of their subjects and the impact of rising standards from adjacent territories of British India

Disabilities of states.

60 The disabilities under which the Princes feel that they lie fall under two main heads (1) disabilities in regard to their relations with *British India, and (2) disabilities in regard to their* relations with the Political Department We will deal with them in this order

States and British India.

61 The Princes do not wish to interfere in matters affecting British India they recognise "the obligation of mutual abstention" Their main contention is that where their interests and those of British India collide or conflict they should have an effective voice in the discussion and decision of the questions that may arise They recognise the interdependence of British India and the states they realise the necessity for compromise, but they claim that their own rights should receive due recognition They contend that in the past their rights of internal sovereignty have been infringed unnecessarily and that their case is not sufficiently presented or considered under the existing system

Present constitution of Government of India

62 Under that system the agent for the Crown is the Governor-General in Council On that council there are six members in addition to the Commander-in Chief who deals with military matters a Home Member a Finance Member a Law Member a Member for Railways and Commerce a Member for Industries and Labour, and a Member for Education, Health and Lands

There is no political member The Viceroy holds the portfolio of the Political Department When a political case goes before council the Political Secretary attends the meeting to state and explain it but he cannot discuss it with the members on equal terms and he cannot vote upon it Where the interests of the states are opposed to the interests of British India there must of necessity—such is the contention of the Princes—be a solid body of opinion predisposed in favour of British India

Political member or members of Council not recommended

63 We think that there is foundation for the complaints of the Princes Indeed it has long been recognised that in this respect the states are at a disadvantage At different times in the last thirty years and more a proposal has been considered that there should be a political member of the Governor General s Council There are two main objections to this proposal (a) that the Princes attach great importance to direct relations with the Viceroy as representing the Crown (b) that the appointment of a political member would still leave the states in a large minority in the voting power of the council Objection (a) is in our opinion insurmountable Once a political member of the Governor General s Council is appointed direct personal relations with the Viceroy will inevitably decline Objection (b) is to some extent met by a proposal to have two or more political members of the Governor General s Council This remedy would increase the difficulty under (a) and there would not be enough work for more than one political member let alone any question of the effect on British India of such a radical alteration of the existing constitution After careful consideration we are unable as others before us have been unable to recommend the creation of a political membership of Council The disadvantages of any such proposal in our opinion outweigh the advantages We are greatly impressed by the importance which the states attach to direct relations with the Viceroy and by the immense value of the *Viceroy's personal influence with the Princes*

Unauthorised scheme of reform

64 A scheme was published in India in April 1928 purporting to represent the views of certain Princes The publication at that time was unauthorised but a scheme on similar lines was revived and put before us in the form adopted by the Council of the European Association in their memorandum to the Indian Statutory Commission The original scheme interposed between the Political Department and the Viceroy a council of six members three Princes or state ministers two *English members with no*

previous experience of India, and the Political Secretary This states council would become the *executive body directing the* Political Department In matters of common concern to British India and the states this states council would meet the existing Governor General's Council and endeavour to arrive at a joint decision In the event of a difference of opinion the Viceroy and Governor-General would decide In order to reconcile the Princes to the loss of sovereignty within their individual states numerous safeguards were devised which would have stripped the new body of any real power of effective action In addition it was part of the scheme to establish a supreme court with powers to settle disputes between the new council and individual states or between individual *states and to pronounce on the validity of legislation* in British India affecting the states

Objections to scheme

65 The objections to this scheme, apart from any question of its cost, are many The following only need be mentioned —

(1) It would put the Viceroy out of touch with the Princes, a matter to which, as already stated, the Princes attach the greatest importance

(2) British India could hardly be expected to join the states on the basis of equal voting power in view of their relative size and population not to mention any question of relative advancement

(3) A Prince could hardly join an executive body of the kind proposed without ceasing for the time to be ruler in his own state and many Princes would object to be placed under other *Princes or ministers of their own* or other states

(4) There would be quite insufficient work for such a body, since the number of cases of any real importance arising in any year are very few

(5) *Such a council would* inevitably lead to greater interference in the internal affairs of individual states, especially of the smaller states

(6) There would be a large surface of possible conflict between the new states council and the existing Chamber of Princes and its Standing Committee This is recognised but not sufficiently provided for by the safeguards of the scheme

Difficulties of federation.

66 No help can in our opinion, be derived from any such scheme Indeed, it would seem quite clear that any schemes of what may be called, perhaps loosely a federal character are at

present wholly premature The states have not yet reached any real measure of agreement among themselves Hence, it is that no constructive proposal has been placed before us Hence it is that the Chamber of Princes must for the present remain consultative Hence it is that no action has been taken on the recommendation of the Montagu Chelmsford report that the proposed Council of Princes and the Council of State or the representatives of each body should meet in consultation on matters of common concern Criticism there is in abundance but there is no concrete suggestion of reform We have been told often that the system is wrong but no alternative system has been suggested We are convinced that the system is not greatly at fault but some adjustments of it to modern conditions are required

Viceroy to be agent for Crown

67 For the present it is a practical necessity to recognize the existence of two Indias and to adapt machinery to this condition To this end we advise that in future the Viceroy—not the Governor General in Council as at present—should be the agent for the Crown in all dealings with the Indian States This change will require legislation but it will have three distinct advantages first it will gratify the Princes to have more direct relations with the Crown through the Viceroy, secondly it will relieve them of the feeling that cases affecting them may be decided by a body which has no special knowledge of them may have interests in opposition to theirs and may appear as a judge in its own cause and thirdly it will in our opinion lead to much happier relations between the states and British India and so eventually make coalition easier

Change in practice not great

68 In practice the change proposed will not be so great as may at first sight appear, nor will it throw a burden of new work on the Viceroy The Viceroy holds the political portfolio at present and the great bulk of the work of the Political Department is disposed of by him with the help of the Political Secretary It is at the Viceroy s discretion whether a political case should go before council On all ceremonial occasions the Viceroy alone represents the states The Royal Proclamation inaugurating the Chamber of Princes dated the 8th February 1921 was addressed by His Imperial Majesty the King Emperor to "His Viceroy and Governor General and to the Princes and Rulers of the Indian States"

Committees in matters of common concern

69 There will of course be matters of common concern to British India and the states in which the interests of the two may

clash The natural procedure in such cases when the Political Department and another Department of the Government of India cannot agree, will be for the Viceroy to appoint committees to advise him On such committees both British India and the states may be represented The appropriate departmental Standing Committees of the Legislative Assembly may meet the Standing Committee of the Chamber of Princes, or a technical committee of the Chamber of Princes consisting wholly or partly of ministers of states, it being often difficult for the Princes themselves to leave their states A convention of this kind may well grow up, beginning, if desired in cases where legislation is in prospect

Formal committees in cases of disagreement.

70 In cases in which such committees fail to agree the Viceroy may appoint a more formal committee consisting of a representative of the states and a representative of British India with an impartial chairman of not lower standing than a High Court judge Such a committee would offer advice only although ordinarily such advice would be taken In the event of their advice not being taken the matter would be referred for decision by the Secretary of State This procedure would be specially suitable in cases of clashing interests in financial or justiciable questions, such as over maritime customs, or the development of ports claims to water, etc Committees of this kind were successfully appointed in disputes between the states and British India some twenty years ago and were recommended by the Montagu Chelmsford report

Recommendation of Montagu-Chelmsford report.

71 Paragraph 308 of that report runs as follows —

> Our next proposal is concerned with disputes which may arise between two or more states, or between a state and a local government or the Government of India, and with a situation caused when a state is dissatisfied with the ruling of the Government of India or the advice of any of its local representatives In such cases there exists at the present moment no satisfactory method of obtaining an exhaustive and judicial inquiry into the issues such as might satisfy the states, particularly in cases where the Government of India itself is involved that the issues have been considered in an independent and impartial manner Whenever therefore in such cases the Viceroy felt that such an inquiry was desirable, we recommend that he should appoint a commission, on which both parties would be represented to inquire into the matter in dispute and to report its conclusions to him If the Viceroy were unable to accept

the finding the matter would be referred for decision by the Secretary of State The commission that we have in mind would be composed of a judicial officer of rank not lower than a High Court judge and one nominee of each of the parties concerned "

Failure to use accepted procedure

72 This procedure was accepted by the Government of India in Foreign and Political Department Resolution No 427 R, dated the 29th October 1920 but unfortunately we think, has never been acted upon We attach the greatest importance to the free adoption of this procedure in current cases It will, in our opinion, satisfactorily dispose of all ordinary differences of opinion as they arise

States and Political Department

73 The disabilities of the Princes in regard to their relations with the Political Department present fewer difficulties There must be a Paramount Power and there are many questions which the Paramount Power alone can decide We think it vitally necessary that there should be in the future constant full and frank consultation between the Political Secretary and the Standing Committee of the Chamber of Princes or their technical advisers, and in order that this may not be left to chance we recommend that there should be a fixed number of meetings on fixed dates not less than three in every year Excellent results followed such consultation in the measures taken to codify political practice As already stated of the twenty three and more points in dispute nine were settled satisfactorily to all concerned We recommend the continuance of this procedure Its success was arrested mainly because after discussion with the Standing Committee the resultant conclusions were circulated to local governments and political officers for opinion with inevitable delay and re opening of questions In our opinion there will be no difficulty in coming to satisfactory compromises provided that effect is given to such compromises without further delay Political officers and representatives of other departments and of local governments can when necessary be associated with the Political Secretary in the course of the discussions But the resultant conclusions should go straight to the Viceroy for his decision without further circulation for opinion or discussion The views of those Princes who remain detached from the Chamber may be obtained separately or subsequently

Services of Political Department

74 We have formed the highest opinion of the work of the Political Department It has produced a long series of eminent

men whose names are regarded with affectionate esteem throughout the states The Princes themselves as a body recognise that they owe much of their present prosperity and progress to the friendly advice and help of political officers and, it may be added, to the education which they have received at the Chiefs' Colleges Their relations with political officers are a credit to both The position of a political officer is by no means an easy position It calls for great qualities of character, tact sympathy patience and good manners He has to identify himself with the interests of both the Paramount Power and the Princes and people of the states and yet he must not interfere in internal administration There have been failures and harsh and unsympathetic political officers no doubt It is not possible that any system can wholly provide against such a result But the mischief done by one unsuitable officer is so great that no effort should be spared to get the best men possible

Recruitment and training of political officers

75 At present political officers are recruited into one department for foreign work (work on and beyond the frontiers) and for political work (work in the states) from the Indian Civil Service and the Indian Army These sources of supply are now limited Both the Indian Civil Service and the Indian Army are short-handed Thoughtful political officers are concerned as to the future recruitment for their department They think that the time has come to recruit separately from the universities in England for service in the states alone We commend this suggestion for consideration We realise the difficulties of maintaining small services but the importance of getting the best men possible is so great that no difficulties should be allowed to stand in the way It is also very important to train them properly when appointed Under existing rules they learn administrative work in a British district and thereafter pass examinations in Lyall s 'Rise and expansion of the British Dominion in India Lyall s "Asiatic studies Tod s Rajasthan Malcolm s Central India Sleeman s Rambles and Recollections the Introduction to Aitchison s Treaties and the Political Department Manual All this is valuable but we advise also a short course under a elected political officer with lectures on Aitchison s Treaties and on political ceremonial and special study of the language and customs of the people and all those graceful courtesies of manner and conduct to which Indians attach supreme importance It might also be possible to arrange at some early period in their career to attach the young officers to our embassies or ministries for a further short course of training

Position of Political Secretary.

76 It has been represented to us that the pay and precedence of the Political Secretary should be raised so as to give him a special position among the Secretaries to Government and thus assist him to approach other departments with added weight and authority

New spirit needful

77 Our proposals are designed to remedy existing difficulties with the least possible disturbance It must be remembered that the states are a very heterogeneous body at varying stages of development conservative and tenacious of traditions in an unusual degree It is important to build on existing foundations and to allow conventions to grow up A spirit of joint action will, it is hoped arise between British India and the states It may be too much to hope that Ephraim will not envy Judah and that Judah will not vex Ephraim, but India is a geographical unity and British India and the states are necessarily dependent on one another

Door to closer union left open

78 We have left the door open to closer union There is nothing in our proposals to prevent the adoption of some form of federal union as the two Indias of the present draw nearer to one another in the future There is nothing in our proposals to prevent a big state or a group of states from entering now or at any time into closer union with British India Indeed in the next section of our report we make suggestions which if adopted may have this result These things may come But it has been borne in upon us with increasing power as we have studied the problems presented to us that there is need for great caution in dealing with any question of federation at the present time so passionately are the Princes as a whole attached to the maintenance in its entirety and unimpaired of their individual sovereignty within their states

IV.—FINANCIAL AND ECONOMIC RELATIONS BETWEEN BRITISH INDIA AND THE STATES. SPECIFIC PROPOSALS.

General treatment of question.

79 The cases put before us are many and various India has long memories and it might almost be said that we have become a target for the discharge of a century of hopes unrealized Some of these exhumations raise questions that are in no sense financial or economic Some are peculiar to one or two states Some involve discussions that are highly technical Some have been under consideration for several years A whole literature has in fact grown up We do not think it necessary to enter into great detail It will be preferable to deal in a general way with points of general interest If our recommendations as to general solutions and machinery are accepted there will be no difficulty in settling individual cases of a more particular character In making our proposals we have kept in mind three points especially, a due regard for the internal sovereignty of the states, the need of reciprocity between them and British India, and the natural and legitimate effects of prescription

Maritime customs

80 The most important claim of the states is for a share in the maritime customs, the proceeds of which are enjoyed at present exclusively by British India The Princes maintain that the maritime customs paid on goods imported into their territory are in effect transit duties that the British Government in the past has persuaded them to abolish transit duties in their own states on the ground that they are injurious to the trade of India as a whole, that the British Government by its maritime customs duties imposes an indirect tax on the subjects of the states, and that it is an elementary principle that revenue derived from any taxation is the due of the government whose subjects consume the commodities taxed Many states recognize that in view of their number, scattered all over India it is not possible to claim free transit in bond to destination in the states they recognize also that consumption per head in the states is less than consumption per head in British India* but they claim a share of the imperial revenue derived from maritime customs to be arranged with individual states on an equitable basis

* We have been informed that about one fifth of the whole customs revenue is derived from Europeans and Indians who have adopted a European style of living and that consumption per head in the states is probably two thirds of the consumption per head in British India

Rights of the case

61 We have no doubt that customs duties are not transit duties a view entirely accepted by Sir Leslie Scott, that every country has from its geographical position the right to impose customs duties at its frontier that such customs duties have been imposed by British India and indeed by the maritime or frontier Indian States for a long period without objection or protest on the part of the inland states Separate conventions or agreements have been made by the British Government with maritime or frontier states such as Travancore Cochin Baroda the leading Kathiawar states and Kashmir thereby recognising the rights and advantages secured to those states by geographical position Hyderabad has a separate treaty the interpretation of which is under discussion The Barcelona Convention (1921) has been referred to in support of the claim of the states Under that convention the signatories agree subject to certain conditions to freedom of transit of goods across territory under the sovereignty or authority of any one of the contracting states But article 15 of that convention expressly excludes states in the position of the Indian States * Most inland states in India still impose their own import and export duties Mysore being the big exception In many states the import and export duties yield a share of the state revenue second only to land revenue especially in areas of deficient rainfall where the land revenue is a very variable item In the aggregate these state duties amount to four and a half crores of rupees or about £3 375 000 a year On principle then we hold that British India is fully entitled to impose maritime customs for the purposes of India as a whole It is a central head of revenue in which the Provinces of India have no share

Equity of the case

62 We consider, however, that the States have a strong claim to some relief So long as the maritime customs were on a low level (about 5 per cent *ad valorem*) there was no substantial grievance If the British Government imposed duties at the ports the states imposed duties on their frontiers Each treated the other as the other treated it But in the year 1921 22 the maritime customs were greatly raised under many heads and later on a policy of discriminating protection was adopted in British India with the result that the revenue from maritime customs has risen from some five to nearly fifty crores of rupees The states were not consulted in regard to this policy The majority of them derive no

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* [illegible] not be [illegible] erritories [illegible] whether [illegible]

benefit from protection and their subjects have to pay the enhanced price on imported goods, in effect a double customs duty, their taxable capacity being reduced to the extent of the maritime duty This in our opinion is a real and substantial grievance which calls for remedy The degree and amount of the relief in individual states however, requires careful examination If the states are admitted to a share of the customs revenue of British India, British India may legitimately claim that the states should bear their full share of imperial burdens on the well established principle that those who share receipts should also share expenditure

Zollverein.

83 Undoubtedly the ideal solution would be a zollverein combined with *the abolition of internal customs in the states themselves* There would then be free transit of goods over India once they had paid maritime customs During Lord Reading's viceroyalty a suggestion for such a zollverein was drawn up—but not put forward—on the following lines —

(1) the adoption of a common tariff administered by the officers of the Government of India even in maritime states

(2) the abolition of all inland customs

(3) the division of the customs revenue among British India and the different Indian States according to population and

(4) the association of representatives of the Indian States with *the Indian Legislature in the determination of* policy

Difficulties of zollverein

84 Such a zollverein would be of great advantage to India as a whole and large sacrifices would be justified in order to secure it Many states appear unwilling at present to enter into a zollverein They *attach importance to their customs as a sign of sovereignty* They cannot afford to give up the revenue from their customs without guarantees against loss and they realize that owing to reasons of budget secrecy they can never be fully consulted in regard to changes in the tariff from year to year It may be possible to overcome these objections by liberal financial treatment As already stated some 4½ crores of rupees are raised by the states in their own local import and export duties and it seems probable that on any calculation their share of the maritime customs would be considerably larger than this In any case it is not impossible that individual large states would come into a zollverein on terms and no obstacle should in our opinion be placed in the way of such a solution

Financial settlement

85 The questions involved are very intricate The incidence of the state import and export duties varies from state to state One state depends mainly on the former, its neighbour on the latter We recommend that an expert body should be appointed to enquire into (1) the reasonable claims of the state or group of states to a share in the customs revenue, and (2) the adequacy of their contribution to imperial burdens The question of a zollverein would come at once before such a body The terms of reference would be discussed with the Princes who would, of course be represented on the enquiring body In the result a financial settlement would be made between the Imperial Government and the state or group of states on the lines of settlements made in the past between the Imperial and Provincial Governments Such a procedure would no doubt take time Much new ground will have to be broken

Claims of states under other heads

86 In making this settlement the reasonable claims of the states under other heads could also be considered It may be that on a financial settlement of this kind will in time grow up closer political relations between the states and British India

States to be consulted

87 The states unquestionably have a claim to consultation in matters of general policy as to maritime customs In practice they cannot share in year to year alterations of the tariff in regard to which secrecy is necessary, and the decision of which must rest with the Imperial Government It would seem sufficient at present to lay down the general principle of consultation when possible and to insist that the Tariff Board should consult the Political Department and the states whenever their interests are affected The question of the representation of Indian States on the Tariff Board was definitely rejected by the Indian Fiscal Commission for the reasons given in paragraph 301* of their report

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Concession to members of the Chamber in their own right

88 In the case of Princes having a salute of 21 or 19 guns a concession is made by which all goods imported for their personal use and the use of their families are exempt from customs duty This differentiation is not unnaturally felt to be invidious We recommend that this exemption should be extended to all Princes who are members of the Chamber of Princes in their own right Such a concession would grant some immediate relief in a form particularly acceptable to the Princes

Railways

89 No financial or economic question of a general character arises in connection with railways It has been suggested, but not argued that as the railway budget makes an annual contribution to imperial general revenues from its surplus the states should have a share It is admitted that for a long time the railways were run at a loss, the deficit being made good by the tax payer of British India Most of the railways were built from capital raised in the open market with or without a guarantee by the Government of India of a minimum rate of interest Some states financed the construction of local lines or blocks of lines on terms arranged between them and the Imperial Government Some states are ordinary shareholders in the railways In the old days the states usually gave the land and materials stone, ballast, wood etcetera without receiving compensation in cash in consideration of the great benefits accruing to the states from being opened up by railways Under recent arrangements the states receive compensation We cannot find that the states have any reasonable claim to a share of the annual profits now made by the railways A general control of railway construction must in the interest of the development of India as a whole lie with the Paramount Power Questions regarding the construction and maintenance of railways were settled in 1923 by agreement between the states and the Government of India The question of juris diction however remains and this has been left over for our advice The Princes feel keenly that they have been unnecessarily deprived of jurisdiction of all kinds on railways traversing their states There are two classes of lines (a) railways of strategic importance and important non strategic railways (b) other railways The former are in the main through-running railways the latter in the main are branch lines

Strategic railways and important non strategic railways

90 It is clearly necessary in the interests of India as a whole of the travelling public and of trade that all measures required

for the proper working of the arterial railways should be concentrated in the hands of one authority and that criminal jurisdiction should be continuous and unbroken Some of the through railways pass through a large number of states the Bombay Baroda and Central India Railway main line, for instance, crosses no less than 38 frontiers between Delhi and Bombay

Civil jurisdiction on railways

91 A claim has been put forward that civil jurisdiction should be restored to the states on these strategic and important non-strategic lines After full consideration we are unable to recommend this course of action The interests of the public in British India and the states alike are involved The trade of the country requires that there should be continuous jurisdiction for civil suits *e g* for damages for loss of or injury to goods and the like An impossible situation injurious to both British India and the Indian States would be created if traders did not know at once where and in what courts to sue We shall refer later to financial questions

Other railways

92 As regards other railways we recommend that the states should be given back all jurisdiction criminal and civil on the following terms

(1) that the state or a company or individual or association of individuals authorised by the state is either the owner of the railway or at least has a substantial interest in it and works it

(2) that the state possesses proper machinery for the administration of justice

(3) that adequate control over the working and maintenance of the line is retained either by the application of an enactment and rules similar to the Indian Railways Act and the rules made thereunder, or otherwise

(4) that the state will grant permission for such inspections of the line by Government railway officials as may be considered necessary

These terms were agreed to in discussion between the Standing Committee of the Chamber of Princes and representatives of the Political and Railway Departments in 1924 They represent a reasonable compromise

Financial questions

93 Certain sums are received in railway areas in Indian States for income tax customs excise licences sale of grass and the like These at present are credited to the railways and not to the states

While we do not advocate any change in the system of realising these revenues—it would not be for the public convenience to do so—we are of opinion that any balance of receipts arising from the state or state subjects, after reasonable deductions for cost of collection, etc , should be handed over to the states concerned This matter should admit of easy adjustment Cases of dispute might be settled by the committee recommended in paragraph 85 above

Mints and coinage

94 There are few subjects on which the states feel more strongly than in regard to mints and currency In the course of the last half century much pressure has been brought to bear upon states, especially during minorities to close their mints and to accept the imperial currency Certain states will retain their own mints and their own currencies and others who once coined their own money claim the right to re open their mints We are strongly of opinion that the multiplication of different currencies in India is hostile to the best interests of the states and to the country as a whole We have heard of one state where the currency has been manipulated with such results that trade has been seriously affected Claims have also been made by the states that they should share the profits of the currency In regard to this we have been informed that as far as metallic currency is concerned it is doubtful whether there are any appreciable profits and that on the paper currency the profits are due to the credit of British India The advantages of the imperial currency are so obvious that we do not consider that there is a substantial claim to any relief but some allowance might be made on this account in any financial settlement that may be made with individual states or groups of states

Loans and relations with capitalists and financial agents

95 In order to protect the states financially it was considered necessary in the past to formulate procedure in regard to loans and relations with capitalists and financial agents At the time this was very necessary owing to lack of knowledge and experience in the states With the advance of the states the need for protection is less than it was and the time has come to revise the rules This question has been the subject of discussion between the Political Department and the Standing Committee and we understand that an agreement is in sight In the interest of India as a whole the Government of India must keep a certain measure of control of the loan market

Salt.

96 From early times, in succession to the Moghal empire, the British Government decided to create a salt monopoly for purposes of revenue In pursuance of that object they stopped the manufacture of salt in the provinces of British India and entered into treaties and engagements with the states with a view to the suppression and prohibition of manufacture of salt within their territories in return for compensation The states claim that the treaties were obtained by pressure and that the compensation given at the time was inadequate then and has become still more inadequate now We are not prepared to recommend any general revision of arrangements which on the whole have worked well Treaties and engagements have been made and there is no more reason why these treaties and engagement should be revised than the political treaties and engagements of more than a century ago No means exist now of ascertaining whether the compensation was reasonable at the time The States are in the same position financially as the provinces of British India The Government of British India has incurred large expenditure in establishing its monopoly and is in our opinion entitled broadly to the profits Any minor claims of modern origin put forward by individual states, and claims by the maritime states to export salt under proper safeguards to countries outside India *e g* Zanzibar, should, in our opinion, be sympathetically examined and disposed of in the ordinary course

Posts

97 The efficiency and security of the postal arrangements of India are matters of imperial concern, in which the public in British India and the states are equally interested The services of the imperial post office are enjoyed by the Indian States in common with the rest of the country Fifteen states have their own postal departments and are outside postal unity Five of these states have conventions with the imperial post office and work in co-operation with it In the other ten states the greater part of the correspondence within the state is carried by the local post offices while branches of the imperial post office exist at most important places and carry correspondence across the state frontiers In most of the convention states imperial post offices exist only on territory which is British for purposes of jurisdiction such as railway stations the residency area etc The state postage stamps of the five convention states are valid for correspondence to any part of India, but not overseas while the stamps of the other ten states are not valid anywhere outside their respective states The existing arrangements work well and it would not be in the interests of the public in either British India or the

states to alter them We do not see our way to recommend an extension of the convention system as desired by certain states In the five convention states no questions arise that cannot be settled in the ordinary course as at present In the ten states where the British and State postal systems exist side by side questions may arise as to the opening of new post offices This is at present a matter of joint discussion and we recommend no change

Telegraphs, wireless and telephones

98 Arrangements for the construction and maintenance in the states of telegraph lines the opening of telegraph offices of wireless stations and of telephone exchanges were settled after discussion with the Standing Committee in a series of Government Resolutions a few years ago and nothing remains for us to deal with under this head

Financial claims in regard to posts and telegraphs

99 The accounts of the posts and telegraphs are now kept on a unified commercial basis The states claim a share in the profits We are informed that there are no divisible profits The profits are devoted to the reduction of capital charges and the extensions and improvements of the existing system So long as the states get their full share of the benefits to which any profits are devoted they have no legitimate cause of complaint On this question they are entitled to full information and we are informed that there will be no objection to giving it The matter is one that can best be settled by periodic conference and rendering of accounts (say every three years) between the representatives of the Princes and officers of the imperial department

Profits of savings banks

100 As part of its activities the postal department has opened savings banks in some of its post offices in the states Some states claim that this arrangement should cease or that the profits of the savings banks should be made over to them This claim raises a very difficult question The attraction of the post office savings bank is undoubtedly the credit of the British Government For administrative reasons the management of the savings banks must follow the management of the post offices and the managing authority is entitled to the bulk of any profit on the transaction In the interests of the people of the states it is most desirable to encourage deposits in savings banks In cases where the profit is considerable some share of it might be transferred to the states as part of the financial settlement suggested above

Service stamps

101 A claim is also advanced that state correspondence should be carried free within the state or that a liberal allowance of service stamps should be allotted to the states for this purpose Allowances of service stamps are given in certain cases on no apparent principle We recommend a settlement of this question once for all on definite principles

Mail robbery rules

102 Objection has been taken to the mail robbery rules Under these rules every state is made responsible for the secure passage of the imperial letter and parcel post through its territory, and when a robbery of the mails takes place the state is required to pay up the full value of whatever is taken or destroyed by the robbers, and also to pay compensation to the carriers of the mail or to their families in the event of the carriers being injured or killed in connection with the robbery Various subsidiary instructions in regard to procedure also find a place among the rules The rules date from the year 1866, they were revised in 1885 We are doubtful whether these rules are any longer necessary In any case they are in need of thorough revision on more modern lines It should not be difficult to settle this question by conference in the ordinary way The procedure in the case of states with efficient police administration should, in our opinion, approximate to that followed in regard to provinces in British India

Opium

103 We are not in a position to make any recommendations in regard to the opium question A committee has been examining certain aspects of this question and its report has not yet reached us This is essentially a case in which the states must bear their share of an imperial burden imposed on India as a whole in the interests of humanity and civilisation It is not within practical politics to ask the Indian tax payer to grant the states compensation in this matter when he has suffered so heavily himself

Excise

104 No general question is raised in connection with excise Owing to the interlocking of the territory of British India and the states many questions of detail must arise in various parts of India and are settled locally A strong complaint has been made to us in connection with the supply of *charas* by the Punjab to the Rajputana and Punjab States The contention is that the Punjab

Government levies a high excise duty on *charas* imported from Central Asia through Kashmir into the Punjab and refuses to grant any rebates on the amounts despatched by it to the states. The states cannot get the *charas* which they require except through the Punjab Government. They allege that the Punjab Government grants rebates of duty to the Government of the United Provinces on all *charas* transmitted there and that the Bombay Government refunds to the states to which it supplies the drug 13/14ths of the duty, 1/14th being kept for incidental expenses. Excise is a transferred subject under a provincial minister. We understand that there is a proposal that the Government of India should assume central responsibility for the supply of *charas* to the Indian States. Whether this proposal be adopted or not we think that the states concerned have a real grievance in the matter which calls for remedy.

Miscellaneous claims

105 Our attention has been drawn to certain alleged disabilities of the Princes in connection with restrictions on the acquisition by them of immovable property in British India, restrictions on the supply of arms and ammunition, restrictions on the employment of non Indian officers, inequality of arrangements in connection with extradition, refusal to recognise Indian state officials as public servants, derogation from the traditional dignity of rulers, the position of cantonments and enclaves within the boundaries of the states. None of these fall within our terms of reference. We feel that there is a good deal to be said on both sides in many of these questions and that the questions themselves can easily be resolved into the terms of an agreement under the procedure which we have outlined in section III above. The question of ports in Kathiawar and the restoration of the Viramgam customs line is unquestionably financial and economic but it is still *sub judice*.

General conclusions

106 It only remains to summarise our conclusions. There are two Indias under different political systems, British India and the Indian States. The latter differ e[illegible] uniform treatment of them is diffic[illegible] engagements and sanads where th[illegible] force but have necessarily been [illegible] political practice to meet changing conditions in a moving world. We have traced and analysed the growth of paramountcy. Though it has already lost and should continue to lose any arbitrary character in full and open discussion between the Princes and the Political Department, it must continue to be paramount and therefore it must be left free to meet unforeseen circumstances as they arise.

We find that the relationship between the Princes and the Paramount Power has on the whole been harmonious and satisfactory No practical proposals for new machinery have been placed before us but we have indicated changes in procedure, based on experience, which should lead to the removal of grievances and the settlement of outstanding questions In particular we recommend that the Viceroy, not the Governor General in Council, should in future be the agent of the Crown in its relations with the Princes and that important matters of dispute between the states themselves between the states and the Paramount Power, and between the states and British India should be referred to independent committees for advice We have suggested methods for recruiting and training officers of the Political Department, to which we attach great importance We have indicated ways of adjusting political and economic relations between British India and the states We hold that the treaties engagements and sanads have been made with the Crown and that the relationship between the Paramount Power and the Princes should not be transferred, without the agreement of the latter, to a new government in British India responsible to an Indian legislature But we have left the door open for constitutional developments in the future While impressed with the need for great caution in dealing with a body so heterogeneous as the Indian Princes, so conservative so sensitive, so tenacious of internal sovereignty, we confess that our imagination is powerfully affected by the stirrings of new life and new hopes in the states by the progress already achieved and by the possibilities of the future To that future we can merely open a vista Our terms of reference do not invite us to survey the distant hills and the valleys that lead to them But we are confident that the Princes who in war and peace have already rendered such signal service will play a worthy and illustrious part in the development of India and the Empire

HARCOURT BUTLER

SIDNEY PEEL

W S HOLDSWORTH

APPENDIX I

(See Paragraph 3)

Questionnaire issued by the Indian States Committee

1 The terms of reference are—

(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from —

Introductory Remarks

(a) treaties engagements and sanads, and

(b) usage, sufferance and other causes.

(2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment

2 The Committee do not consider that the substance of part (1) of the terms of reference can be suitably dealt with by a questionnaire Moreover, it is understood that the Standing Committee of the Chamber of Princes and a large number of the Princes and Chiefs present in Delhi for the meeting of the Chamber of Princes have obtained legal assistance on the general questions raised in regard to it and that the Committee will have the benefit of such assistance Should any State wish to place its own views on record it is hoped that it will do so

3 It should be stated that the Committee are not empowered to deal with past decisions of the Paramount Power, or present differences between them and the States except in so far as they illustrate or bear upon the relationship existing between the Paramount Power and the States The Committee do not however desire to limit the evidence which the States may wish to bring forward in arguing their cases by referring to past decisions or present differences of opinion within the limits of the first part of the instructions which refer only to the existing relationship and in so far as they may consider it necessary to do so

4 The questionnaire therefore deals with the second part of the instructions only As the Indian States have not yet placed before the Committee the questions which they wish to bring forward this questionnaire is based upon the records of the Political Department in so far as they relate to matters that have recently come under notice or discussion Other questions than those covered by the questionnaire may therefore be raised by the States. The Committee are anxious that every opportunity should be given to the States to place their views before them in so far as they are covered by the terms of reference

Questions

5 (a) Do the States claim a share of the Imperial customs revenue and, if so on what grounds?

Custom

(b) Has the recent raising of customs duties adversely affected the States or their subjects? If so please quote facts and figures

(c) Would the States be prepared to abolish their own import and export duties on condition of receiving a share to be agreed upon, of Imperial customs revenue?

(d) On what grounds do the Princes who are Members of the Chamber in their own right other than those already enjoying

exemption, claim exemption from the payment of customs duties on articles imported for the personal use of themselves or their families?

Railway Jurisdiction

6 Have the States anything to add to the summary regarding jurisdiction over lands occupied by railways in their territories, as amended by the Standing Committee of the Chamber of Princes on the 20th of August, 1924? (See Annexure A)

Mints and Currency

7 Are there any considerations relative to this question which the States would like to bring before the Committee?

Dealings between Indian States and Capitalists and Financial Agents.

8 Have the States anything to add to the summary approved by the Chamber of Princes in November, 1924, in regard to this question?

Manufacture and Export of Salt by the Darbars

9 This subject is dealt with by treaties and agreements between the States and the Government of India Have the States any representations to make in regard to it?

Posts and Telegraphs

10 Have the States any objection to the working of the existing system of telegraph and postal services within their territories and what claims do they make to the profits if any, accruing from these services and in the event of losses, would the States be prepared to share the losses?

Discussion of matters of joint interest to British India and the States

11 What procedure would the States desire for the joint discussion of questions in which the interests of the States and the interests of British India may not be identical Recently special Sub Committees of Dewans have been appointed by the Standing Committee of the Chamber of Princes to confer with officers of the Government of India Has this procedure been found to be satisfactory? If not what procedure is suggested?

General financial relations.

12 Have the States any suggestions to make with regard to the general financial arrangements existing between them and British India?

Opium.

13 Do the States desire to bring forward any questions in connection with opium?

Excise.

14 Do the States desire to bring forward any questions in connection with Excise?

General

15 Do the States desire to bring forward any other questions, *vide* paragraph 4 above?

ANNEXURE A.

Summary as amended by the Standing Committee of the Chamber of Princes on the 20th August, 1924

1 In 1891 the principle was laid down that, as soon as a Darbar railway became part of a line of communication between State territory, on the one hand, and British or State territory, on the other, a cession of jurisdiction should be required Subsequent developments have, however, considerably modified the view then taken It was, for instance, decided in 1893 that the orders should not be so interpreted as to require cession of jurisdiction over a line lying wholly within State limits but connected at one end with the British Railway system Again, in 1898, a Darbar was permitted to retain jurisdiction over a portion of State Railway in spite of the fact that a portion of the line traversed another State Three years later the orders were relaxed in another case, in which a Darbar was permitted to retain jurisdiction, although the railway penetrated into British territory In 1902 a further step in the same direction was taken, a Darbar being permitted to retain jurisdiction

over a proposed railway, even though it might subsequently form part of a line connected at both ends with the British system The principle of the original orders has also been relaxed in several cases where lines pass through more than one State by permitting Darbars to retain jurisdiction over the portions of the lines within their respective limits

2 In the case of railway lines over which full civil and criminal jurisdiction has been ceded the policy of the Government of India has been to apply to those lands only such laws as are necessary for the administration of civil and criminal justice together with the Railway, Post Office and Telegraph Acts There are cases in which it has been found convenient to apply to such lands the laws of an adjoining British district *en bloc* but all such laws are not enforced in those lands and fiscal laws particularly are not enforced as it is not the policy of the Government of India to raise revenue from lands which are ceded for railway purposes An Act such as the Excise Act is however applied to such lands when it is required to control the consumption of and traffic in liquor on railway stations or to protect the excise revenue of British India A law such as an Intoxicating Drugs Law may also be enacted for such lands when experience has shown that it is necessary to prevent smuggling through the railways as much in the interests of the States themselves as of Government Such a measure though fiscal is not revenue producing and the Government of India make no profit out of it

3 The following are the conditions on which the Government of India are prepared to consent to the permanent retention of jurisdiction by States over the railways in their territories other than those which form parts of an important through route operated by the Government of India or by a Company in the profits of which the Government of India shares —

(i) that the State or a Company or individual or association of individuals authorised by the State is either the owner of the Railway or at least has a substantial interest in it and works it

(ii) that the State possesses proper machinery for the administration of justice

(iii) that adequate control over the working and maintenance of the line is retained either by the application of an enactment and rules similar to the Indian Railways Act and the rules made thereunder or otherwise

(iv) that the state will grant permission for such inspections of the line by Government Railway officials as may be considered necessary

4 In case of grave public emergency or in the strategic and military interests of the Empire it is necessary to have unity of control and the Imperial Government feel confident that they may rely on the Indian States to co operate with them as may be necessary on such occasions

5 In the case of serious failure to comply with conditions (ii), (iii) and (iv) in paragraph 3 above the British Government may take such steps as are necessary to effect a remedy provided that where in pursuance of this clause it becomes ultimately necessary to take over jurisdiction such jurisdiction shall be restored to the State concerned on its giving adequate assurances to the Government of India for the proper observance of the conditions in future.

APPENDIX II

(SEE PARAGRAPH 24)

Letter from the Viceroy and Governor General of India to His Exalted Highness the Nizam of Hyderabad, dated Delhi, the 27th March, 1926

YOUR EXALTED HIGHNESS,

Your Exalted Highness's letter of 20th September, 1925, which has already been acknowledged, raises questions of importance, and I have therefore taken time to consider my reply

I do not propose to follow Your Exalted Highness into a discussion of the historical details of the case As I informed you in my previous letter, your representations have been carefully examined, and there is nothing in what you now say which appears to affect the conclusions arrived at by me and my Government and by the Secretary of State Your Exalted Highness's reply is not in all respects a correct presentation of the position as stated in my letter of 11th March last, but I am glad to observe that in your latest communication you disclaim any intention of casting imputations on my distinguished predecessor, the late Marquis Curzon

I shall devote the remainder of this letter to the claim made by Your Exalted Highness in the second and third paragraphs of your letter and to your request for the appointment of a commission

2 In the paragraphs which I have mentioned you state and develop the position that in respect of the internal affairs of Hyderabad, you, as Ruler of the Hyderabad State, stand on the same footing as the British Government in India in respect of the internal affairs of British India Lest I should be thought to overstate your claims, I quote Your Exalted Highness's own words 'Save and except matters relating to foreign powers and policies the Nizams of Hyderabad have been independent in the internal affairs of their State just as much as the British Government in British India With the reservation mentioned by me, the two parties have on all occasions acted with complete freedom and independence in all inter Governmental questions that naturally arise from time to time between neighbours Now, the Berar question is not and cannot be covered by that reservation No foreign power or policy is concerned or involved in its examination, and thus the subject comes to be a controversy between the two Governments that stand on the same plane without any limitations of subordination of one to the other"

3 These words would seem to indicate a misconception of Your Exalted Highness's relations to the Paramount Power, which it is incumbent on me as His Imperial Majesty's representative to remove since my silence on such a subject now might hereafter be interpreted as acquiescence in the propositions which you have enunciated

4 The Sovereignty of the British Crown is supreme in India, and therefore no Ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing Its supremacy is not based only upon treaties and engagements, but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and

duty of the British Government, while scrupulously respecting all treaties and engagements with the Indian States, to preserve peace and good order throughout India. The consequences that follow are so well known, and so clearly apply no less to Your Exalted Highness than to other Rulers, that it seems hardly necessary to point them out. But if illustrations are necessary, I would remind Your Exalted Highness that the Ruler of Hyderabad along with other Rulers received in 1862 a Sanad declaratory of the British Government's desire for the perpetuation of his House and Government, subject to continued loyalty to the Crown; that no succession in the *Masnad* of Hyderabad is valid unless it is recognised by His Majesty the King Emperor; and that the British Government is the only arbiter in cases of disputed succession.

5. The right of the British Government to intervene in the internal affairs of Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have indeed shown again and again that they have no desire to exercise this right without grave reason. But the internal, *no less than the external, security which the Ruling Princes enjoy* is due ultimately to the protecting power of the British Government, and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must lie. The varying degrees of internal sovereignty which the Rulers *enjoy are all subject to the due exercise by the Paramount Power of* this responsibility. Other illustrations could be added no less inconsistent than the foregoing with the suggestion that, except in matters relating to foreign powers and policies, the Government of Your Exalted Highness and the British Government stand on a plane of equality. But I do not think I need pursue the subject further. I will merely add that the title "Faithful Ally" which Your Exalted *Highness enjoys has not the effect of putting Your Government in* a category separate from that of other States under the paramountcy of the British Crown.

6. In pursuance of your present conception of the relations between Hyderabad and the paramount power, you further urged that I have misdescribed the conclusion at which His Majesty's Government have arrived as a "decision," and that the doctrine of *res judicata* has *been misapplied to matters in controversy between Hyderabad and* the Government of India.

7. I regret that I cannot accept Your Exalted Highness's view that the orders of the Secretary of State on your representation do not amount to a decision. It is the right and privilege of the Paramount Power to decide all disputes that may arise between States, or between one of the States and itself, and even though a Court of Arbitration *may be appointed in certain cases, its function is merely to offer* independent advice to the Government of India, with whom the decision rests. I need not remind you that this position has been accepted by the general body of Indian Rulers as a result of their deliberations on paragraph 308 of the Montagu Chelmsford Report. As regards the use of the term *res judicata*, I am, of course, aware that the Government of India is not, like a Civil Court, precluded from taking *cognizance of* a matter which has already formed the subject of a decision, but the legal principle of *res judicata* is based on sound practical considerations, and it is obviously undesirable that a matter which has once been decided should form the subject of repeated controversies between the same parties.

8 I now pass on to consider your request for the appointment of a Commission to enquire into the Berar case and submit a report As Your Exalted Highness is aware, the Government of India not long ago made definite provision for the appointment of a Court of Arbitration in cases where a State is dissatisfied with a ruling given by the Government of India If, however, you will refer to the document embodying the new arrangement, you will find that there is no provision for the appointment of a Court of Arbitration in any case which has been decided by His Majesty's Government, and I cannot conceive that a case like the present one, where a long controversy has been terminated by an agreement executed after full consideration and couched in terms which are free from ambiguity, would be a suitable one for submission to arbitration

9 In accordance with Your Exalted Highness's request, your present letter has been submitted to His Majesty's Secretary of State, and this letter of mine in reply carries with it his authority as well as that of the Government of India

Yours sincerely,

(Sd) READING

APPENDIX III.

(SEE PARAGRAPH 38)

Joint opinion of the Right Hon Sir Leslie F. Scott, K C, M.P., Mr. Stuart Bevan, K.C, M.P., Mr Wilfrid A. Greene, K.C., Mr. Valentine Holmes, and Mr. Donald Somervell

COUNSEL ARE REQUESTED TO ADVISE on the legal and constitutional aspects of the questions raised by the terms of reference to the Indian States Committee

Opinion

The terms of reference to the Indian States Committee are as follows —

(1) to report upon the relationship between the Paramount Power and the States with particular reference to the rights and obligations arising from —

(a) treaties, engagements and sanads, and

(b) usage, sufferance and other causes,

(2) to enquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment

It will be observed that the phrase "Paramount Power" is used in part (1) but as that phrase refers not to crown *simpliciter* but to the Crown in possession of certain attributes, we think it will be clearer, if we discuss the relationship of the states with the Crown, and express our opinion separately as to the meaning of "paramountcy" in India

It may be convenient to state our main conclusions first and then give the reasoning on which they are based

Main conclusions

(1) In the analysis of the relationship between the states and the Crown legal principles must be enunciated and applied

(2) The Indian States to day possess all original sovereign powers, except in so far as any have been transferred to the Crown

(3) Such transfer has been effected by the consent of the states concerned, and in no other way

(4) The consent of a state to transfer sovereign rights to the Crown is individual to that state, and the actual agreement made by the state must be investigated to see what rights and obligations have been created

(5) Such agreement appears normally in a treaty or other formal engagement An agreement to transfer sovereign powers is, however, capable in law of being made informally In such case the onus is on the transferee, *viz.*, the Crown, to prove the agreement

(6) The relationship of the Crown as Paramount Power and the states is one involving mutual rights and obligations It rests upon agreement express or implied with each state and is the same with

regard to all the states Paramountcy gives to the Crown definite rights, and imposes upon it definite duties in respect of certain matters and certain matters only, *viz* those relating to foreign affairs and external and internal security (a phrase which we employ for brevity and define more fully in paragraph 6 *infra*) It does not confer upon the Crown any authority or discretion to do acts which are not necessary for the exercise of such rights, and the performance of such duties Wherever ' paramountcy ' is mentioned in this opinion we mean paramountcy in the above sense and no other

(7) The relationship is between the states on the one hand and the British Crown on the other The rights and obligations of the British Crown are of such a nature that they cannot be assigned to or performed by persons who are not under its control

Legal principles are to be applied

1 The relationship between the Crown and the various Indian States is one of mutual rights and obligations and we have no hesitation in expressing the opinion that it must be ascertained by legal criteria When using the word legal, we are not thinking of law in the limited sense in which it is confined to law laid down by an authority which has power to compel its observance, but are dealing with well recognised legal principles which are applied in ascertaining mutual rights and obligations where no municipal law is applicable That the absence of judicial machinery to enforce rights and obligations does not prevent them from being ascertained by the application of legal principles is well illustrated by reference to international relations Their legal principles are applied in arbitrations between independent states, and by the Permanent Court of International Justice, whose statute provides that the court shall apply principles of law recognised by all civilised nations

The Indian States were originally independent each possessed of full sovereignty and their relationship *inter se* and to the British power in India was one which an international lawyer would regard as governed by the rules of international law As the states came into contact with the British they made various treaties with the Crown So long as they remained independent of the British power, international law continued to apply to the relationship And even when they came to transfer to the Crown those sovereign rights which in the hands of the Crown, constitute paramountcy international law still applied to the act of transfer But from that moment onwards the relationship between the states and the Crown as Paramount Power ceased to be one of which international law takes cognizance

As soon as a treaty was made between the Crown and a state the mutual rights and obligations flowing therefrom and the general nature of the relationship so established could only be ascertained by reference to legal principles This result has not in our opinion been in any way affected either by lapse of time or by change of circumstances Although the treaty in any individual case, may have been modified or extended by subsequent agreement express or implied, there is no ground for any suggestion that the relationship has passed from the realm of law The effect of the treaty itself and the extent if any to which it has been modified or extended fall to be determined by legal considerations

The view implicit in the preceding observations seems to accord with the terms of reference to the Indian States Committee in which the Secretary of State has directed enquiry We see no ground for

applying to the relationship any other than legal criteria, and we are of opinion that the relationship is legal, importing definite rights and obligations on both sides

Sovereignty rests in the states except so far as transferred to the Crown

2 As each state was originally independent so each remains independent, except to the extent to which any part of the ruler's sovereignty has been transferred to the Crown To the extent of such transfer the sovereignty of the state becomes vested in the Crown, whilst all sovereign rights privileges and dignities not so transferred remain vested in the ruler of the state In the result the complete sovereignty of the state is divided between the state and the Crown The phrase "residuary jurisdiction" is sometimes used in official language *In our opinion it is the state and not the Crown* which has all residuary jurisdiction

That the sovereignty of the states still exists has been recognised by leading writers on the subject as well as by the pronouncements of the Crown itself

Thus Lee Warner bases his definition of a state on its possession of internal sovereignty (page 31) Similar views are expressed by others

That this view is accepted by the Crown can be confirmed by reference to many official documents As examples we may quote sanads issued after the mutiny which refer to "the Governments of the several Princes and Chiefs who now govern their own territories" or the proclamation of the 19th April 1875 dealing with Baroda in which the Gaekwar Mulhar Rao is deposed from the 'sovereignty of Baroda' and the 'sovereignty' of the state is conferred on his successor, or reference in the Montagu Chelmsford report to the "independence of the states in matters of internal administration' and to 'their internal autonomy"

The Crown has no sovereignty over any state by virtue of the Prerogative or any source other than cession from the ruler of the state The idea which is held or seems to be held in some quarters that the Crown possesses sovereign rights not so transferred to it by the state is erroneous

Consent the sole method by which sovereign powers have been transferred from existing states to the Crown

3—(a) Sovereignty is, as between wholly independent states, susceptible of transfer from one holder to another by compulsory annexation or voluntary cession

Where a conqueror after victory in war annexes the conquered state, the loss of sovereignty by the defeated state and the assumption of sovereignty by the conqueror over the territory so transferred is recognised as valid by international law The essence of the event is that the conqueror takes, without any act of the vanquished state It is a mere exercise of power by the conqueror

Annexation may also be enforced without fighting Where a stronger state proclaims its intention to annex the territory and sovereign powers of a weaker state and in fact does so then in international law the transfer is as effective as if there had been a conquest

Cession of sovereignty takes place when one state cedes territory or sovereign rights to another state In cession it is not the act of the transferee but the consent of the transferor, which affects the transfer But wherever the transfer is the direct result of an exercise of power it is in the essence a case of annexation in whatever form the transfer may be expressed—as for instance where the transfer takes the form of a cession which a defeated state is compelled to execute Indeed whenever the transferor state acts under the compulsion of the stronger transferee state the transfer made by the transferor is not really the free act of that state but a mere taking by the transferee state—an annexation in reality though not in form A real cession *i e* a transfer which is really the act of the transferor necessarily depends upon the free consent of the transferor and is essentially a product of voluntary agreement

3—(7) In this section of our Opinion we have up to now been dealing with transfer of territory or sovereign rights as between independent states whose relations are subject to the rules of ordinary international law But our conclusion that in that field consent is essential to every transfer which is not in essence a forcible taking by the more powerful state is even more true of a transfer to the Crown by an Indian State at any time after it had come into permanent contractual relationship with the Crown by agreeing to the paramountcy of the Crown in return for its protection For, where the relationship is thus created by an agreement which by its express or implied terms defines the permanent division between the Paramount Power and the Indian ruler of the sovereignty over the state s territory any further act of acquisition of sovereign rights by force or pressure is excluded by the contract itself In order to acquire any further sovereign rights the Paramount Power must ask for and obtain the agreement of the protected state To take them by force or pressure would be a direct breach of the contract already made

This position is frankly acknowledged by the Crown We quote in the appendix some of the chief historical pronouncements which have been made upon the British attitude towards the Indian States

The possibility in law of the Paramount Power repudiating its legal relationship with its dependent state and using force or pressure to acquire powers over it in breach of the contractual terms need not be considered The pronouncements which we have cited put any conscious attempt of the kind wholly out of the question and the exercise in fact of force or pressure whether intended or not would be a breach of the contract It follows that the relationship of each state to the Crown is and has been since the time of the first treaty between the two purely contractual

In this context it is to be noted that from those states which have never ceased to exist as states the Crown has never claimed any rights as flowing from conquest or annexation Where the Crown has intended to annex its action has been unequivocal

Many Indian States have in the past been conquered and annexed They were then merged in British India and ceased to exist Some were annexed by an exercise of superior power without the use of force

In a few cases states have been annexed and wholly merged in British India and then recreated by the prerogative act of the Crown In such cases the Crown is free to grant what powers of sovereignty it chooses and the sovereignty of the ruler to whom

rendition is made, is limited and defined by the conditions of the grant.

But when once a state has been in fact recreated, and a contractual relationship established between it and the Crown, it becomes thenceforth subject to the same considerations as other states in contractual relationship with the Crown, and mutual rights and obligations are determined by the contract, and by that alone

Other suggested methods of transfer

3—(c) At this point it is convenient to consider the methods alternative to that of consent, which have been suggested by leading jurists and others for effecting a transfer from a state to the Crown of sovereign rights

Sir William Lee Warner suggests five channels as contributing to the rights or duties of the Indian Princes (i) the Royal Prerogative, (ii) Acts or Resolutions of Parliament, (iii) the law of nature, (iv) direct agreement between the parties, and (v) usage With regard to the first two suggested channels or—to use a word which seems to us to be more appropriate—*sources* of rights and duties we are quite unable to find any legal principle on which it is possible to base a contention that either (i) the Royal Prerogative or (ii) Acts or Resolutions of the British Parliament can give to the Crown any rights against the states or impose any obligations upon them

(i) In the case of the Royal Prerogative Sir William Lee Warner does not himself explain how it can be effective to bind the Indian States, and we are forced to the conclusion that he was driven to suggest the Royal Prerogative, as a source of rights and duties which he believed to exist because he could think of no other

(ii) With regard to Acts of Parliament, Sir Wiliam Lee Warner does not appear to assert that they have the direct effect of creating obligations in the Indian Princes In so far as he suggests that the statutes of the British Parliament which control British subjects may have an indirect reaction, in fact, on Indian States with whom British subjects have dealings or that Acts of Parliament may influence Indian rulers in a particular direction we agree with him but this is a very different thing from his proposition that Acts of Parliament are one of the five channels" from which flow the duties and obligations of the Indian States

(iii) His third suggested source namely the law of nature he puts forward as the source of an obligation to refrain from inhuman practices such as suttee infanticide or slavery Whether there be an obligation of the kind we express no opinion but if there be, it is a duty due to the civilised world and we can see no ground for treating it as any special obligation owed to the Crown as such Indeed the history of the dealings of the Crown with the states with regard to practices of this kind apparently shows a recognition by the Crown that their suppression can only be secured by negotiation and agreement and not by virtue of any right of interference

(iv) With regard to the fourth source of obligation suggested by Sir William Lee Warner, namely direct agreement between the parties we agree with him as above stated

(v) Sir William does not define what he means by usage his fifth source, if he meant an acquiescence in a practice in such circumstances that an agreement to that practice is to be inferred, we

should agree with him because his fifth source would merely be particular form of agreement. But Sir William seems to regar usage as a source of obligation even though agreement be absent an with this view we disagree We discuss the topic later in ou Opinion

It is to be observed that Sir William Lee Warner is definitely o the view that the Indian States are sovereign states, and it is onl in regard to the view which he takes as to the extent to which an the way in which their sovereignty has been limited that we par company with him

Hall deals with the question of the limitation on the sovereignt of the states in a footnote (Hall s International Law 8th Ed p 28) He suggests an explanation different from any put forward b Sir William Lee Warner, for the limitation which he believes t exist over and above the limitation imposed by treaty He says that in matters not provided for by treaty a residuary jurisdiction i considered to exist and the treaties themselves are subject to th reservation that they may be disregarded when the supreme inter ests of the Empire are involved or even when the interests of th subjects of the Native Princes are gravely affected The treatie really amount to little more than statements of limitation which the Imperial Government except in very exceptional circumstances places on its own action In dealing with this suggestion of a resi duary jurisdiction we experience the same difficulty that we felt in dealing with Sir William Lee Warner s suggestion of the Royal Prerogative and Acts of Parliament as sources of obligation on the states towards the Crown namely that we can conceive no legal justification for inferring the existence of such a residuary jurisdic tion Moreover Hall does not indicate what reasoning led him to draw the inference But we are clearly of opinion that Hall s view, as expressed in his footnote is wrong The statement that the treaties are merely unilateral acts of the Crown setting a self im posed limit on its inherent powers over the states cannot in our opinion be supported The assumption that there are any such in herent powers is devoid of any legal foundation—indeed his asser tions in the footnote go beyond anything which the Crown has ever claimed and are quite inconsistent with the various formal pro nouncements of the Crown cited in the appendix to this Opinion Those pronouncements leave no room for doubt that the Crown regards its treaties and agreements with the Indian States as binding upon it in as full a manner as any of its treaties with other sovereign states

3—(*d*) Before we pass from this subject there is one other matter with which we ought to deal Three of the writers of this Opinion have in an earlier Opinion expressed the view that paramountcy is a factor limiting the sovereignty of the States At first sight this view may seem to be incompatible with the opinion which we have expressed above that agreement is the sole source of limitation upon the sovereignty of the states and that obli gations of the states towards the Crown are created by agreement and by nothing else But in truth there is no such incompatibility The Crown is aptly described as the Para mount Power because the states have *agreed* to cede to it certain important attributes of their sovereignty and paramountcy is a useful word to describe the rights and obligations of the Crown which arise out of the agreed cession of those attributes of sovereign ty So understood paramountcy can properly be said to be a factor limiting the sovereignty of the states But inasmuch as

this is only to say that the agreement of the states to cede attributes of sovereignty is a factor limiting their sovereignty, we think that to introduce the word paramountcy (as we did in our earlier Opinion) in this connection was confusing and apt to mislead It is to be observed that Sir William Lee Warner avoids the use of it and does not include paramountcy in the list of channels" through which in his view rights and obligations are created He uses paramountcy only to describe the relationship itself and this use is correct

In our considered view there is a real danger in a loose use of the word In its correct sense paramountcy is not a factor in creating any rights or obligations but is merely a name for a certain set of rights when vested by consent in another sovereign state In correctly understood it may be treated as creating rights and obligations, and as the word paramountcy itself is not a word of art with a defined meaning the rights and obligations attributed to it would be undefined If paramountcy were a source of rights there would be no limit save the discretion of the Paramount Power to the interference with the sovereignty of the protected states by the Paramount Power Indication of this misunderstanding of paramountcy are we are informed present in the official correspondence with individual states and this fact gives the point importance We regard the idea that paramountcy as such creates any powers at all as wholly wrong and the resort to paramountcy as an unlimited reservoir of discretionary authority over the Indian States is based upon a radical misconception of what paramountcy means

The existence of a general discretionary authority is moreover, wholly inconsistent with the pronouncements of the Crown to which we have already referred

3—(e) We have given at some length our reasons for our opinion that the sovereignty of the states is limited by agreement and by nothing else because we think that this is the most important of the questions which we have to consider

States to be considered separately

4 The consent to the transfer to the Crown of any sovereign powers is the consent of each individual state given by its sovereign Each state and each occasion of transfer must be considered separately in order to find out what the agreement was by which the consent of the state was given to any particular session

This legal conclusion not only is of general importance for the purpose of correcting a too common misconception that the problem of the states can be disposed of by general propositions applicable to all alike but introduces a practical difficulty in the writing of this Opinion There are many individual differences in regard to the terms of the consensual relationships of the several states to the Crown and the relationship may be constituted by one or by several agreements In this Opinion we must content ourselves with a statement only of reasons and conclusions of general application

We have noted a common view which seems to us fallacious It is that the possession by the Crown of certain rights of sovereignty over State A of itself justifies a legal conclusion that the Crown has a similar right over a neighbouring State B If we are right in the view which we hold (and we hold it confidently) that the relation between the Crown and A and between the Crown and B is in

each case regulated by a separate contract or set of contracts it follows necessarily that the view so expressed is a fallacy But this crude form of the fallacy is less common than the view that, because the Crown enjoys a certain right in regard to many states, a legal conclusion necessarily follows that it possesses the right generally in regard to all states This argument is equally fallacious, because in our view the relationship is one of contract

It should however be borne in mind that, if the Crown has a certain right clearly established and publicly recognised, in regard to a group of states, their example may not improbably influence a neighbouring state to follow suit, and enter into its own individual contract with the Crown ceding the same kind of rights And the more general and notorious the Crown s possession of the right in question is the less improbable it will be, that our hypothetical state should consent to be on the same footing without insisting on the execution of a formal instrument Where this happens the Crown in the result possesses a right in regard to that state, similar to that which it already possesses in regard to the others, but the reason is that that state has by conduct made its own tacit agreement with the Crown conferring the same powers it is not because any such sovereign rights extending all over India, are inherent in the Crown

In this connection a further reference is necessary to the question of paramountcy which gives point to the views which we have expressed above The Crown is in relation to all the states the Paramount Power Its position as such is universally recognised and cannot be disputed From this relationship, which as we have already pointed out is itself based on agreement express or implied certain mutual rights and duties arise What those rights and duties are we discuss later in this Opinion (paragraph 6 *infra*) It is sufficient to state here that they relate to foreign affairs and the external and internal security of the states Paramountcy bears the same meaning in relation to all the states, although the precise manner in which it is put into operation in any given circumstances may differ In this sense, and in this sense only, can it be said that the position of all the states *vis à vis* the Crown is the same But it is the same not because the Crown has any inherent residuary rights but because all the states have by agreement ceded paramount rights to the Crown

Agreement transferring sovereign rights normally expressed in treaty though capable of being made informally but onus of proof then on transferee, i e, the Crown

5—(*a*) When one state makes an agreement with another state affecting its sovereignty and thereby does an act of great public importance it is usual to put the agreement into solemn form in order to have an unimpeachable record, and to ensure that the signatories are properly accredited to bind their respective states.

5—(*b*) It is no doubt true that both in international law, as between independent states and in the law applicable to the relations of the Crown and Indian States it is possible that an agreement effecting a cession of sovereign rights should be made informally by a mere written agreement or correspondence and even that it should be made by word of mouth at an interview But if so important a transaction as a cession of sovereign rights is alleged to have been carried out informally, the language used and the surrounding circumstances must be scrutinised with care, to see

firstly, whether the transaction is really an agreement to transfer sovereign rights, or something less important, and secondly, whether the authority of the signatory to bind his state is beyond doubt. That such a transaction should be carried out by a mere oral interview is so unlikely as in itself to raise doubts as to the value of the evidence.

Sanads.

5.—(c) Its terms of reference request the Indian States Committee to report upon, *inter alia*, the effect of sanads upon the relationship of the states to the Paramount Power. The word "sanad" (in older documents often spelt "sunnad" as it is pronounced) is, as we are informed, in common use in India, not only for diplomatic instruments of grant, but in ordinary commercial documents, and receipts for money, and means merely "evidence" or "record".

But whatever be the correct signification of the word, we realise that in political parlance it is used generally as indicating a grant, or recognition from the Crown to the ruler of a state.

But a sanad by way of grant can have no operative effect, as a grant, if the grantee already has the powers which the sanad purports to grant. It could only have that effect, if the grantee state had, at some previous date in its history, ceded to the Crown those very powers which, or some of which, the sanad purports to grant, or if it were a case of a re-creation out of British India of a lapsed state, or a cession to an existing ruler, of territory which at the date of the sanad was a part of British India.

Similar considerations apply to a sanad by way of recognition. If the state does not possess the right, the recognition would be construed as a grant, but if it does possess the right, then the sanad is a mere acknowledgment or admission by the Crown.

It follows also from the reasoning of this Opinion that the machinery of a sanad cannot be used so as to curtail the powers of a ruler. *Ex hypothesi* each particular state possesses, at any given moment, a measure of sovereignty which is definite. It will in every case be less than complete sovereignty, because the state must have given up those rights which constitute paramountcy and it may also, by particular agreements with the Crown, have given up other sovereign rights—either many or few. But after deducting all these cessions from the total of complete sovereignty, it is plain that the state still possesses "x" rights. Whatever "x" may be, no part of "x" can be taken away from it against its will—and the Crown cannot do indirectly by a sanad which purports to define the rights of the state, what it cannot do directly. If the sanad defines the state's rights as wider than "x", then to the extent of such excess it may be construed as a grant by the Crown. But if the definition is narrower than "x" then to the extent of the restriction the sanad will be inoperative. The effect of the ordinary sanad may perhaps be expressed shortly by saying that, leaving aside the exceptional cases where the Crown is making a new cession of sovereign rights, it is nothing more than an act of comity, expressing a formal recognition by the Crown of powers of sovereignty which a State in fact possesses.

We need only add that where a sanad is issued by the Crown in circumstances showing that it represents an agreement with the state concerned, then it is in fact the record of the agreement, and will have the operative effect of an agreement.

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In fine we see no ground upon which there can be imputed to usage between an Indian State and the Crown any different efficacy from that which may be attributed to it by municipal law between individuals It follows therefore that *mere* usage cannot vary the treaties or agreements between the states and the Crown, because of itself it does not create any new right or impose any new obligation Acquiescence in a particular act or a particular series of acts *primâ facie* does nothing more than authorize the doing of those particular acts on the particular occasions when acquiescence was so given It is legally possible that behind the usage there should in fact be an agreement dealing with rights, but it is important to realize the limitations within which it is permissible to infer such an agreement, *i e* , that no agreement can underlie usage, unless both the contracting parties *intend* to make on

And where an agreement is not made plain by incorporation in a written instrument which can be read and understood, it is important *to avoid confusion of thought as to the subject matter* A licence to the Government of India to do a particular act on one or more occasions, which without leave would be an encroachment upon the state s sovereignty, is not an agreement to cede sovereign powers And no inference of an agreement to cede sovereignty can be drawn from one or from many such licences The very fact that a licence is sought shows a recognition by the Crown that it does not possess the sovereign power to do the act without the consent of the ruler concerned And it is obvious that a licence of the kind is much more likely to be given informally than a cession of sovereignty It follows therefore that unless the circumstances viewed as a whole compel the inference that the parties were intending to make an agreement changing their sovereign relationship, the usage cannot alter their rights And on this question of fact, it should be borne in mind that the Crown and the states have acted in a way which shows that this view has really been taken by both In the case of many states there exists a whole series of treaties and engagements, regulating many aspects of their relationship by express provision Where express contractual regulation thus extends in many directions over the field of political contact, there remains little room for implying tacit agreement

Similarly where it is sought upon evidence of conduct to found an allegation of usage,' and from that usage to imply an agreement, if the facts disclose protests by the state or any other evidence negativing an intention to make such an agreement, the very basis of the claim is destroyed It is perhaps pertinent to observe that where a political practice is said to amount to a usage followed as between the Crown and a state or states and that practice began with some act of the Government of India during a minority or other interregnum when the state was under British administration, there is an additional obstacle to the inference from the usage of any intention by the state to make any agreement affecting its sovereignty

It follows from the whole reasoning of this Opinion that the only kind of 'usage" in connection with the Indian States, which can even indirectly be a source of sovereign powers is not a usage common *to many states* as is the case in international law, but a course of dealing between a particular state and the Crown of a kind which justifies an inference of an agreement by that state to the Crown having some new sovereign power over the state We may also add that a "political practice" as such has no binding force,

Usage, sufferance and other causes

5—(*d*) (i) *Usage*—The subject of "usage' looms large in discussions of the rights of the Crown over the states, because it is supposed by many to be in itself a source of sovereign rights This idea is erroneous

Usage" is an ambiguous word It has one sense or one set of attributes in international law, and another in municipal law In the former, 'usage' means the practice commonly followed by independent nations, and has the binding character of a rule of law, because it represents the consensus of opinion amongst free and independent nations

But the characteristic relationship between nations, which in international law gives to usage its legal efficacy, is absent from India The Indian States are not in the international sense independent, but protected by the British Crown, they are not free *inter se* to follow what practices of interstatal relations may seem good to them, and thereby to form and exhibit a consensus of opinion on any particular usage, for they have, by the very terms of their basic agreement with the Crown, given up the rights of diplomatic negotiation with and of war against or pressure upon other Indian States, and have entrusted to the Crown the regulation of their external relations, in return for the Crown's guarantee that it will maintain in their integrity their constitutional rights, privileges and dignities, their territory and their throne No consensus of opinion as amongst free and independent nations can therefore even begin to take shape, and without it the source of obligation in the international relationship cannot arise

In municipal law usage is of itself sterile, it creates neither rights nor obligations. It is true that a course of dealing between two parties may be evidence of an agreement to vary some existing contract, so if it represents a tacit but real agreement between them, that notwithstanding the express terms of that contract they will be bound by the practice which they have been used to follow In such a case the usage becomes embodied in a fresh, though tacit and unwritten agreement, but it is not the usage itself, it is the agreement underlying it, which gives rise to the new rights

And we should add that the inference that a new agreement has thus been made cannot be lightly drawn There is a vital distinction between acquiescence by A in acts which involve a departure by B from the existing contract between them, and an agreement by both to a variation of the contract, so that B shall in future have the right to do those acts, whether A acquiesces or not We use the word 'variation" designedly, because the sovereignty of the states remains in them, save in so far as it has been ceded by treaty or other agreement, and any further diminution of the sovereign rights of the state must constitute a variation of the existing contract so contained in the treaty or other agreement.

We recognise that there are in other fields of human affairs occasions when usage as such may acquire the binding force of law, but they are, in our opinion, irrelevant to the matters under consideration For instance, we disregard the case of usage as a historical origin of rules of the common law of a country, because the history of British relations with the states leaves no room for the birth and growth of a common law For analogous reasons we see no relevance in usages such as have led to the growth of the cabinet system in the unwritten constitution of Great Britain, or have set parliamentary limitations upon the Royal Prerogative

In fine we see no ground upon which there can be imputed to usage between an Indian State and the Crown any different efficacy from that which may be attributed to it by municipal law between individuals It follows therefore that *mere* usage cannot vary the treaties or agreements between the states and the Crown, because of itself it does not create any new right or impose any new obligation Acquiescence in a particular act or a particular series of acts *primâ facie* does nothing more than authorize the doing of those particular acts on the particular occasions when acquiescence was so given It is legally possible that behind the usage there should in fact be an agreement dealing with rights, but it is important to realize the limitations within which it is permissible to infer such an agreement, e.g., that no agreement can underlie usage, unless both the contracting parties *intend* to make one

And where an agreement is not made plain by incorporation in a written instrument which can be read and understood, it is important to avoid confusion of thought as to the subject matter A licence to the Government of India to do a particular act on one or more occasions, which without leave would be an encroachment upon the state's sovereignty, is not an agreement to cede sovereign powers And no inference of an agreement to cede sovereignty can be drawn from one or from many such licences The very fact that a licence is sought shows a recognition by the Crown that it does not possess the sovereign power to do the act without the consent of the ruler concerned And it is obvious that a licence of the kind is much more likely to be given informally than a cession of sovereignty It follows therefore that, unless the circumstances viewed as a whole compel the inference that the parties were intending to make an agreement changing their sovereign relationship, the usage cannot alter their rights And on this question of fact it should be borne in mind that the Crown and the states have acted in a way which shows that this view has really been taken by both In the case of many states there exists a whole series of treaties and engagements, regulating many aspects of their relationship by express provision Where express contractual regulation thus extends in many directions over the field of political contact, there remains little room for implying tacit agreement

Similarly where it is sought upon evidence of conduct to found an allegation of usage," and from that usage to imply an agreement, if the facts disclose protests by the state or any other evidence negativing an intention to make such an agreement, the very basis of the claim is destroyed It is perhaps pertinent to observe that where a political practice is said to amount to a usage followed as between the Crown and a state or states, and that practice began with some act of the Government of India during a minority or other interregnum when the state was under British administration, there is an additional obstacle to the inference from the usage of any intention by the state to make any agreement affecting its sovereignty

It follows from the whole reasoning of this Opinion that the only kind of 'usage" in connection with the Indian States, which can even indirectly be a source of sovereign powers, is not a usage common to many states as is the case in international law, but a course of dealing between a particular state and the Crown of a kind which justifies an inference of an agreement by that state to the Crown having some new sovereign power over the state We may also add that a 'political practice" as such has no binding force,

still less have individual precedents or rulings of the Government of India

When we speak of the possibility of inferring an agreement from usage, we desire to point out that such an agreement can only be inferred as against the particular state which was party to the usage, and cannot extend to bind any other state This caution should be observed even where some other state has been following the identical usage In the case of State A evidence of facts beyond the usage itself may conceivably justify the inference of agreement, in the case of State B, such additional evidence may be absent

(ii) *Sufferance*—The word "sufferance" means 'acquiescence", and may either amount to a consent to particular acts, or particular things, or be of such a character, and given in such circumstances as to justify the inference of an agreement From the legal point of view its efficacy is no greater, and no less, than that of usage, and it is in principle covered by what we have said about usage If there be any difference, it is rather that the word seems to exclude the idea of two-sided agreement.

5—(*e*) The ordinary rule that the burden of proof is upon the person who is propounding the existence of an agreement applies, in our view, in the case of the states and the Crown, with as much force as it applies to the case of individuals whose relations are governed by municipal law

Paramountcy

6—(*a*) We have already [paragraph 3 (*d*), *supra*] discussed certain aspects of paramountcy and have expressed the opinion that the relationship is founded upon agreement, express or implied, existing in the case of all the states, and that the mutual rights and duties, to which it gives rise, are the same in the case of all the states In order to ascertain what these mutual rights and duties are it is necessary to consider what are the matters in respect of which there has been a cession of sovereignty on the part of all the states

6—(*b*) The gist of the agreement constituting paramountcy is, we think, that the state transfers to the Crown the whole conduct of its foreign relations—every other state being foreign for this purpose—and the whole responsibility of defence, the consideration for this cession of sovereignty is an undertaking by the Crown to protect the state and its ruler against all enemies and dangers external and internal and to support the ruler and his lawful successors on the throne These matters may be conveniently summarised as, and are in this Opinion called, "foreign relations and external and internal security" *We can find no justification for saying* that the rights of the Crown in its capacity as Paramount Power extend beyond these matters The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a state must, we think, be found in the answer to the following question "Is the act which the Crown claims to do necessary for the purpose of exercising the rights or fulfilling the obligations of the Crown in connection with foreign relations and external and internal security?" If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing but if they did, such a tribunal when in possession of all the facts would find no insuperable difficulty in deciding the question

We do not propose in this Opinion to discuss particular cases in which a claim by the Paramount Power to interfere with the internal sovereignty of a ruler would be justified on the principle which we have enunciated There are certain cases as for example such misgovernment by the ruler as would imperil the security of his state in which the Paramount Power would be clearly entitled to interfere Such an interference would be necessary for the purpose of exercising the Crown s rights and fulfilling its obligations towards the state But in this Opinion we are dealing rather with principles than their application and an enumeration of cases in which interference would appear to be justifiable would be out of place It would be equally out of place for us to try to particularize as to what acts of interference would be proper in cases where some amount of interference was admittedly justifiable beyond saying that the extent manner and duration of the interference must be determined by the purpose defined in our question above

6 (c) We have already stated and we repeat that the position of Great Britain as Paramount Power does not endow it with any general discretionary right to interfere with the internal sovereignty of the states That in certain matters the element of discretion necessarily enters, is no doubt true Thus in the case of a national emergency the Crown must temporarily be left with some measure of discretion for the common protection of all But this is due to the fact that the right and duty of the Crown under the paramountcy agreement to defend the states necessarily involve such a discretionary element It is a very different thing to say that in case of a difference arising between the Crown and a state the Crown by virtue of its paramountcy has a general discretion to overrule the objections of the state Whether or not it is entitled to do so must depend not upon the discretion of the Crown but upon the answer to the question of fact set out in the last sub paragraph

6 —(*d*) So far as we can judge there is no evidence of the states generally agreeing to vest in the Crown any indefinite powers or to confer upon it any unlimited discretion The existence in certain parts of the field of paramountcy of such a discretionary element as is referred to above is no ground for presuming an intention to confer a similar discretionary authority in any other fields such as for example commercial or economic matters Indeed the history of most states discloses numerous occasions on which the Government of India in order to get some action adopted within or affecting a state has sought and obtained the consent of the state to a particular agreement for the purpose thus showing a recognition by the Crown that its powers are limited and that it cannot dispense with the consent of the state

6 —(*e*) Our opinion that the rights and duties arising from paramountcy are uniform throughout India carries with it the resultant view that the Crown by the *mere fact of its paramountcy* cannot have greater powers in relation to one state than it has in relation to another The circumstance that a state has, by express or implied agreement conferred upon the Crown other specific powers does not mean that the paramountcy of the Crown has in relation to that state received an extension Much less can it mean that it has by such an agreement received such an extension in relation to other states which were not parties to the agreement The rights so conferred on the Crown arise from the agreement conferring them and not from the position of the Crown as Paramount Power

still less have individual precedents or rulings of the Government of India

When we speak of the possibility of inferring an agreement from usage, we desire to point out that such an agreement can only be inferred as against the particular state which was party to the usage, and cannot extend to bind any other state This caution should be observed even where some other state has been following the identical usage In the case of State A evidence of facts beyond the usage itself may conceivably justify the inference of agreement, in the case of State B, such additional evidence may be absent

(ii) *Sufferance*—The word sufferance' means "acquiescence", and may either amount to a consent to particular acts, or particular things, or be of such a character, and given in such circumstances as to justify the inference of an agreement From the legal point of view its efficacy is no greater, and no less, than that of usage, and it is in principle covered by what we have said about usage If there be any difference, it is rather that the word seems to exclude the idea of two-sided agreement

5—(e) The ordinary rule that the burden of proof is upon the person who is propounding the existence of an agreement applies, in our view, in the case of the states and the Crown, with as much force as it applies to the case of individuals whose relations are governed by municipal law

Paramountcy.

6—(a) We have already [paragraph 3 (*d*), *supra*] discussed certain aspects of paramountcy and have expressed the opinion that the relationship is founded upon agreement, express or implied, existing in the case of all the states, and that the mutual rights and duties, to which it gives rise, are the same in the case of all the states In order to ascertain what these mutual rights and duties are it is necessary to consider what are the matters in respect of which there has been a cession of sovereignty on the part of all the states

6—(b) The gist of the agreement constituting paramountcy is, we think, that the state transfers to the Crown the whole conduct of its foreign relations—every other state being foreign for this purpose—and the whole responsibility of defence, the consideration for this cession of sovereignty is an undertaking by the Crown to protect the state and its ruler against all enemies and dangers external and internal and to support the ruler and his lawful successors on the throne These matters may be conveniently summarised as and are in this Opinion called, 'foreign relations and external and internal security" We can find no justification for saying that the rights of the Crown in its capacity as Paramount Power extend beyond these matters The true test of the legality of any claim by the Crown, based on paramountcy, to interfere in the internal sovereignty of a state must, we think, be found in the answer to the following question "Is the act which the Crown claims to do necessary for the purpose of exercising the rights or fulfilling the obligations of the Crown in connection with foreign relations and external and internal security?" If the claim be tested in this way, its legality or otherwise should be readily ascertainable These matters do not fall within the competence of any legal tribunal at present existing, but if they did, such a tribunal when in possession of all the facts would find no insuperable difficulty in deciding the question

of an impartial kind for their adjustment, and for ensuring compliance with any decision so arrived at

We should add that such an implied obligation on the Crown must carry with it the corresponding implication of such obligations on each state as may be necessary to make the machinery effective

6—(i) The question also arises whether there is any obligation upon the Crown analogous to that described by us in the last sub paragraph in a case where the dispute is between a state and the Government of India We recognise that this question is one of great practical importance to the states We are instructed that a complaint made by a state against the Government is decided by the Government, on a mere written representation without any of the opportunities afforded by ordinary legal procedure for testing the opposite side's arguments and evidence that the material on which the decision is based is kept secret and finally that on many occasions of dispute, in the view of the Princes and Chiefs, the Government of India is both party and judge in its own case

We have considered this matter but we are of opinion that, disregarding all political considerations there is no legal obligation upon the Crown to provide machinery for independent adjudication Each State, when ceding paramountcy obtained from the Crown by agreement certain undertakings express or implied but in our view this was not one and cannot be implied The states merely relied upon the Crown to carry out its undertakings.

6—(j) Whenever for any reason the Crown is in charge of the administration of a state or in control of any interests or property of a state its position is, we think, in a true sense a fiduciary one That a trustee must not make a profit out of his trust that a guardian in his dealings with his ward must act disinterestedly are legal commonplaces and afford a reliable analogy to the relationship between the Paramount Power and the states Upon this view the Crown would not be justified in claiming the right as Paramount Power for example to override the rights of a state in the interest of British India Such a claim would, in our view be indefensible on the ground last mentioned, and also because it would involve the extension of the conception of paramountcy beyond the limits which we have denied above

The nature of the relationship

7 The terms of reference to the Indian States Committee raise another question to the legal aspect of which we have given careful consideration namely the *nature of* the relationship between the Paramount Power and the states having regard particularly to the parties between whom *the mutual rights and obligations subsist and* the character of those rights and obligations Our views may be summarised as follows:—

(i) The mutual rights and obligations created by treaty and agreement are between the states and the British Crown The Paramount Power is the British Crown and no one else, and it is *to it* that the states have entrusted their foreign relations and external and internal security It was no *accidental* or loose use of language when on the threshold of dealing with the subject of the Indian States the Montagu Chelmsford report described the relationship as a relationship to the British Crown, for the treaty

6.—(*f*) The Crown has by the mere cession to it of paramountcy, acquired no right to control the independent action of any state in matters lying outside the special field so ceded. Outside the subjects of foreign relations and the external and internal security of the state each state remains free to guide its actions by considerations of self interest and to make what bargain with the Government of India it may choose. There is no legal or constitutional power in the Government of India or its officers nor in the Viceroy or the Political Department to insist on any agreement being entered into by a state. Nor is there any legal basis for a claim that any state is under a duty to co-operate in matters outside the field of paramountcy with British India. The phrase "subordinate co-operation" which appears in some treaties (*e g* the Udaipur Treaty of 1818) is concerned in our opinion solely with military matters.

It follows from this ascertainment of the legal position, that in a large field of subjects such as fiscal questions, and the commercial and industrial development of India as a whole, it is within the rights of each state so far as paramountcy is concerned and apart from special agreement to remain inactive, and to abstain from co-operation with British India. In many directions the legal gap may have been bridged by particular agreements between individual states and British India, but such agreements may fall short of what is or may hereafter become desirable in the common interest of the development of India as a whole or may need revision. It is therefore important to draw attention to the fundamental legal position that if, on political grounds the co-operation of the states is desired their consent must be obtained. The converse proposition is equally true. Outside the matters covered by paramountcy, and in the absence of special agreement, no state is entitled to demand the assistance of the Crown to enforce the co-operation of British India in the performance of those acts which the states may consider desirable from their point of view.

6.—(*g*) The rights of any given state being defined by its agreement with the Crown, it follows that the Crown has no power to curtail those rights by any unilateral act.

For the same reason it is impossible for Parliament in Great Britain by means of legislation to curtail any rights of the states. The Crown cannot break a treaty with the concurrence of the Lords and Commons any more than without their concurrence.

Similarly the Legislature of British India is equally unable to impose upon the ruler of a state any obligation which under its agreements with the state the Crown is not authorized to impose.

6.—(*h*) It is a necessary consequence of the conclusions expressed above that the relationship of paramountcy involves not merely a cession of sovereignty by each state but also the undertaking of definite obligations by the Paramount Power towards each state. This aspect of the matter will not be disputed.

The duties which lie upon the Crown to ensure the external and internal security of the states, and to keep available whatever armed forces may be necessary for these purposes are plain.

Similarly the fact that the states by recognising the paramountcy of the Crown have abandoned the right to settle by force of arms disputes which may arise between them clearly imposes upon the Crown the duty either to act itself as an impartial arbiter in such disputes or to provide some reasonably just and efficient machinery

of an impartial kind for their adjustment, and for ensuring compliance with any decision so arrived at

We should add that such an implied obligation on the Crown must carry with it the corresponding implication of such obligations on each state as may be necessary to make the machinery effective

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relations of the states are with the King in his British or it may be, in his Imperial capacity, and not with the King in the right of any one of his Dominions The contract is with the Crown as the head of the executive government of the United Kingdom under the constitutional control of the British Parliament

(ii) The states cannot dictate to the Crown the particular methods by which or servants through whom the Crown should carry out its obligations The Secretary of State the Viceroy and the present Government of British India are the servants chosen by the Crown to perform the Crown s obligation to the states So long as those obligations are being fulfilled and the rights of the states respected the states have no valid complaint This liberty is necessarily subject to the condition that the agency and machinery used by the Crown for carrying out its obligations must not be of such a character as to make it politically impracticable for the Crown to carry out its obligations in a satisfactory manner

(iii) The obligations and duties which the parties to the treaties have undertaken require mutual faith and trust they demand from the Indian Princes a personal loyalty to the British Crown and from the British Crown a continuous solicitude for the interests of each state and they entail a close and constant intercourse between the parties.

In municipal law contracts made in reliance on the personal capacity and characteristics of one party are not assignable by him to any other person We regard the position of the Crown in its contracts with the states as comparable Not only is the British Crown responsible for the defence and security of the states and the conduct of their foreign relations but it has undertaken to discharge these duties itself for the states The British Crown has this in common with a corporation that by its nature it must act through individuals but where it has undertaken obligations and duties which have been thus entrusted to it by the other contracting party in reliance on its special characteristics and reputation it must carry out those obligations and duties by persons under its own control and cannot delegate performance to independent persons nor assign to others the burden of its obligations or the benefit of its rights So the British Crown cannot require the Indian States to transfer the loyalty which they have undertaken to show to the British Crown to any third party nor can it without their consent hand over to persons who are in law or fact independent of the control of the British Crown the conduct of the states foreign relations nor the maintenance of their external or internal security

LESLIE SCOTT

STUART BEVAN

WILFRID GREENE

VALENTINE HOLMES

D B SOMERVELL

24th July 1928

APPENDIX

Extract from Queen Victoria's Proclamation, 1858

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted and will be scrupulously observed, and We look for the like observance on their part We desire no extension of Our present Territorial Possessions, and while We will admit no aggression upon Our Dominions or Our rights to be attempted with impunity, We shall sanction no encroachment on those of others We shall respect the rights dignity, and honour of Native Princes as Our own, and We desire that they, as well as Our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government"

Extract from King Edward VII's Coronation Message

"To all My feudatories and subjects throughout India, I renew the assurance of My regard for their liberties, of respect for their dignities and rights, of interest in their advancement, and of devotion to their welfare, which are the supreme aim and object of My rule, and which, under the blessing of Almighty God, will lead to the increasing prosperity of My Indian Empire, and the greater happiness of its people"

Extract from King George V's Speech at the Delhi Coronation Durbar, 1911

"Finally, I rejoice to have this opportunity of renewing in My own person those assurances which have been given you by My revered predecessors of the maintenance of your rights and privileges and of My earnest concern for your welfare, peace, and contentment

"May the Divine favour of Providence watch over My people and assist Me in My utmost endeavour to promote their happiness and prosperity

"To all present, feudatories and subjects, I tender Our loving greeting"

Extract from King George V's Proclamation, 1919

"I take the occasion again to assure the Princes of India of my determination ever to maintain unimpaired their privileges, rights and dignities"

Extract from King George V's Proclamation, 1921

"In My former Proclamation I repeated the assurance given on many occasions by My Royal predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights and dignities of the Princes of India. The Princes may rest assured that this pledge remains inviolate and inviolable"

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